

A1 Dusty Earthworks Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.2 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs. Contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.3 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.4 "Cookies" means small files that are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using the Contractor's website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.</p> <p>1.5 "Contractor" means A1 Dusty Earthworks Pty Ltd ATF Manton-Smout Trust T/A A1 Dusty Earthworks Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of A1 Dusty Earthworks Pty Ltd ATF Manton-Smout Trust T/A A1 Dusty Earthworks Pty Ltd.</p> <p>1.6 "Equipment" means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.</p> <p>1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>1.8 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Client.</p> <p>1.9 "Price" means the Price payable (plus any GST where applicable) for the Services and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 7 of this Contract.</p> <p>1.10 "Services" means all Services supplied by the Contractor to the Client at the Client's request from time to time.</p> <p>1.11 "Site" means the address nominated by the Client to which the Materials are to be supplied by the Contractor and/or where the Equipment is to be located.</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order or accepts Services/Equipment provided by the Contractor.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Client acknowledges and accepts that the supply of Services/Equipment on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Services/Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.</p> <p>2.6 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to the Services supplied is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall advise the Client or their agent to authorise commencement of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.</p> <p>2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Authorised Representatives</p> <p>3.1 The Client acknowledges that the Contractor shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Services or variations requested thereto by the Client's duly authorised representative.</p> <p>4. Errors and Omissions</p> <p>4.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>4.3 In circumstances where the Client is required to place an order for Services in writing or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services ("Client Error"). The Client must pay for all Services it orders from the Contractor notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.</p> <p>5. Change in Control</p> <p>5.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.</p> <p>6. Credit Card Information</p> <p>6.1 The Contractor will:</p> <p>(a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Contractor;</p> <p>(b) not disclose the Client's credit card details to any third party; and</p> <p>(c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 19) or where required by law.</p> <p>6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due or outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Client which were not known at the time of the return of the Equipment, the Contractor is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any</p>	<p>action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.</p> <p>7. Price and Payment</p> <p>7.1 At the Contractor's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Contractor to the Client; or</p> <p>(b) the Price as at the date of delivery of the Services and/or Equipment according to the Contractor's current Price list; or</p> <p>(c) the Contractor's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>7.2 The Contractor reserves the right to change the Price:</p> <p>(a) if a variation to the Services/Equipment which are to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Site, obscured building/Site defects, incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), hard rock barriers or reinforcing cement below the surface, latent soil conditions (including, but not limited to, where the soil is wet or made up of clay etc), iron reinforcing rods in concrete, or hidden underground services etc.) which are only discovered on commencement of the Services; or</p> <p>(d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.</p> <p>7.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>7.4 At the Contractor's sole discretion, a non-refundable deposit may be required.</p> <p>7.5 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:</p> <p>(a) on delivery of the Services/Equipment;</p> <p>(b) on completion of the Services;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) following any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.</p> <p>7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.</p> <p>7.7 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards.</p> <p>7.8 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Contractor reserves the right to treat all retentions as placing the Client's account into default.</p> <p>7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Client's account into default and subject to default interest in accordance with clause 17.1.</p> <p>7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for providing the Contractor's Services/Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>7.11 The Client acknowledges and agrees that the Client's obligations to the Contractor for the provision of Services shall not cease until:</p> <p>(a) the Client has paid the Contractor all amounts owing for the particular Services; and</p> <p>(b) the Client has met all other obligations due by the Client to the Contractor in respect of all Contracts between the Contractor and the Client.</p> <p>7.12 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Services, and this Contract, shall continue.</p> <p>8. Delivery of Services/Equipment</p> <p>8.1 At the Contractor's sole discretion delivery of the Services/Equipment shall take place when the Services/Equipment are supplied to the Client at the Client's nominated address.</p> <p>8.2 At the Contractor's sole discretion, the cost of delivery is in addition to the Price.</p> <p>8.3 Subject to clause 8.4 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably practicable.</p> <p>8.4 The Services' commencement date will be extended, and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:</p> <p>(a) have the Site ready for the Services; or</p> <p>(b) notify the Contractor that the Site is ready.</p> <p>8.5 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.</p> <p>8.6 Any time specified by the Contractor for delivery of the Services/Equipment is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services/Equipment to be supplied at the time and place as was arranged in the Client's order. In the event that the Contractor is unable to supply the Services/Equipment as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Services/Equipment at a later time and date.</p> <p>9. Risk</p> <p>9.1 The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>9.2 The Client acknowledges and accepts that, under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Site:</p> <p>(a) the Contractor shall suspend the Services;</p> <p>(b) the Client shall be fully responsible for the resolution of any resulting problems; and</p> <p>(c) any additional cost incurred by the Contractor shall be added to the Price under clause 7.2.</p> <p>9.3 In the event that during the course of the Services the Contractor discovers any fossils, artefacts or any other remains of geological or archaeological interest are discovered the Contractor reserves the right to halt all Services, remove any of their equipment from the Site and immediately notify the Client. The Client accepts and agrees that all additional costs that may be incurred by the Contractor as a result of any such delays (including, but not limited to, where the Contractor is unable to remove their equipment from the Site, etc.) shall be borne by the Client and shall be treated as a variation in accordance with clause 7.2.</p> <p>10. Site Access and Condition</p> <p>10.1 Prior to the Contractor commencing any Works the Client must advise the Contractor of the precise location of all known asbestos/hazardous materials on the Site and clearly mark the same. Removal from the Site and</p>	<p>the disposal of asbestos/hazardous materials shall at all times be the Client's responsibility unless otherwise agreed in writing.</p> <p>10.2 It shall be the Client's responsibility to make the Site available on the agreed dates and times. If the Works are delayed or interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Contractor and the Client, any additional costs will be invoiced to the Client as per clause 7.2.</p> <p>10.3 It shall be the Client's responsibility (where applicable) to ensure that, prior to commencement of the Services that:</p> <p>(a) all gas and electricity are cancelled and disconnected (from the main supply at the street);</p> <p>(b) there are no height restrictions likely to be imposed by overhead power lines or any other obstruction) at all times to enable the Contractor to undertake the Services; and</p> <p>(c) a safety fence is erected around the perimeter of the Site to ensure public safety.</p> <p>10.4 It is the intention of the Contractor and agreed by the Client that:</p> <p>(a) it is the responsibility of the Client to allocate an area for the accumulation and removal of any rubbish created from the provision of the Services by the Contractor, and the cost of such rubbish disposal containers and/or rubbish removal services shall be incurred by the Client. The Client acknowledges that, whilst the Contractor shall make all endeavours to accumulate all rubbish, excavated material, vegetation, demolished or dismantled structures at such area, the Contractor shall not be held liable for any small amount of rubbish, such as the like remaining at the Site;</p> <p>(b) the Client shall ensure that the Contractor has clear and free access to the Site at all times to enable them to undertake the Services (including carrying out Site inspections, gain signatures for required documents, and for the delivery of the Equipment). The Contractor shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor;</p> <p>(c) such access is suitable to accept the weight of laden trucks, front and loader or other earth moving equipment as may be deemed necessary by the Contractor;</p> <p>(d) the Client agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable; and</p> <p>(e) it is the Client's responsibility to provide the Contractor, while at the Site, with adequate access to available water, electricity, toilet and washing facilities if required.</p> <p>10.5 Where the Contractor requires that materials, equipment, plant, and tools etc. required for the Services be stored at the Site, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.</p> <p>10.6 The Client agrees to be present at the Site when and as reasonably requested by the Contractor and its employees, contractors and/or agents.</p> <p>10.7 Site Inductions</p> <p>(a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or</p> <p>(b) where the Contractor is in control of the Site, the Client and/or the Client's third-party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Services will be by appointment only and unless otherwise agreed, no such an appointment by the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.</p> <p>11. Underground Locations & Dial Before You Dig</p> <p>11.1 Unless otherwise agreed in writing between the Client and the Contractor it shall be the Client's responsibility to advise the precise location of all underground services on the Site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electric services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site.</p> <p>11.2 If the Client requests the Contractor to engage a service locator, then this shall be in addition to the Price and "Dial Before You Dig" must be consulted and any potential underground services marked on the Site.</p> <p>11.3 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified and notified as per clause 11.1.</p> <p>12. Insurance</p> <p>12.1 The Contractor shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.</p> <p>13. Compliance with Laws</p> <p>13.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any work health and safety (WHS) laws relating to building/construction Sites, and any other relevant safety standards or legislation, particularly those in relation to asbestos / hazardous materials (and the safe removal and disposal of the same). The Client agrees to indemnify the Contractor against all claims arising from health issues related to exposure to asbestos at the Site.</p> <p>13.2 Modern Slavery</p> <p>For the purposes of clauses 13.2 to 13.7:</p> <p>(a) "Act" means the Modern Slavery Act 2018 (cth)</p> <p>(b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.</p> <p>13.3 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.</p> <p>13.4 Whether the Client is a Reporting Entity or not, the Client shall:</p> <p>(a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;</p> <p>(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;</p> <p>(c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;</p> <p>(d) provide to the Contractor a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and</p> <p>(e) if the Client requests the Contractor's request (or such longer period as the Contractor agrees), provide to the Contractor any information or assistance reasonable requested by the Contractor;</p> <p>(i) concerning the Client's compliance with the Act;</p> <p>(ii) concerning the Client's operations and supply chains;</p> <p>(iii) to enable the Contractor to prepare a Modern Slavery Statement or otherwise comply with the Act; or</p> <p>(iv) to enable the Contractor to assess and address risks of Modern Slavery practices in its operations and supply chains.</p> <p>13.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and the Contractor will be able to terminate the Contract for any breach by the Client.</p> <p>13.6 The Client warrants that any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act.</p> <p>13.7 The Client shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Client's breach of this clause 13.</p> <p>14. Personal Property Securities Act 2009 ("PPSA")</p> <p>14.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a</p>
--	---	--

A1 Dusty Earthworks Pty Ltd – Terms & Conditions of Trade

	security agreement for the purposes of the PPSA and creates a security interest in all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client.		(b) the Client has exceeded any applicable credit limit provided by the Contractor;	19.11
14.3	The Client undertakes to:		(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	
	(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:		(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	
	(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;	18.1	Cancellation	
	(ii) register any other document required to be registered by the PPSA; or		Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Services/Equipment to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.	
	(iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);	18.2	The Contractor may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Services/Equipment at any time before the Services/Equipment are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Services/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.	
	(b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Services charged thereby;	18.3	In addition to clause 18.2 in these terms and conditions, the Contractor shall be entitled to cancel the Contract if:	
	(c) not register a financing charge statement in respect of a security interest without the prior written consent of the Contractor; and		(a) the Contractor reasonably believes that a third party may attempt to take possession of the Equipment; or	
	(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Services in favour of a third party without the prior written consent of the Contractor.	18.4	(b) the Equipment is at risk.	
14.4	The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.		In the event that the Client wishes to cancel the delivery of the Services/Equipment it shall be the Client's responsibility to provide the Contractor with at least twenty-four (24) hours written notice prior to the commencement of the Services and/or delivery of the Equipment. Where such notice is received outside of the prescribed timeframe then the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).	
14.5	The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	18.5	Further to clause 18.4 in the event of premature termination of the hire period the Client acknowledges and agrees that the Client shall remain liable for all hire charges due up to the time of cancellation until such notice is given.	
14.6	The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	19.	Privacy Policy	
14.7	Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.	19.1	All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws").	
14.8	The Client must unconditionally ratify any actions taken by the Contractor under clauses 14.2 to 14.5.		The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.	
14.9	Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	19.2	Notwithstanding clause 19.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:	
14.10	Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 14 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 14 will apply generally for the purposes of the PPSA.		(a) IP address, browser, email client type and other similar details;	
15.	Security and Charge		(b) tracking website usage and traffic; and	
15.1	In consideration of the Contractor agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Contractor's security interest over the Client on the PPSA, 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).		(c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information").	
15.2	The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.		If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.	
15.3	The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.	19.3	The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.	
16.	Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")	19.4	The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:	
16.1	The Client must inspect the Contractor's Services on completion, and the Contractor on delivery and must within twenty-four (24) hours notify the Contractor in writing of any evident defect in the Services/Equipment (including the Contractor's workmanship) or of any other failure by the Contractor to describe or the description of a quote for the Services/Equipment which the Contractor was to supply. The Client must notify any other alleged defect in the Contractor's Services, Equipment as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to review the Services, or Equipment that were provided.		(a) to assess an application by the Client; and/or	
16.2	Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied warranties and guarantees (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).		(b) to notify other credit providers of a default by the Client; and/or	
16.3	The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.		(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	
16.4	Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.		(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.	
16.5	If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.	19.5	The Client consents to the Contractor being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.	
16.6	If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Services/Equipment under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment which have been provided to the Client which were not defective.	19.6	The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):	
16.7	If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defective Services/Equipment is:		(a) the provision of Services/Equipment; and/or	
	(a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;		(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services/Equipment; and/or	
	(b) otherwise negated absolutely.		(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or	
16.8	Notwithstanding clauses 16.1 to 16.7 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:		(d) enabling the collection of amounts outstanding in relation to the Services/Equipment.	
	(a) interference with the Services/Equipment by the Client or any third party without the Contractor's prior approval;	19.7	The Contractor may give information about the Client to a CRB for the following purposes:	
	(b) the Client failing to follow any instructions or guidelines provided by the Contractor;		(a) to obtain a consumer credit report;	
	(c) fair wear and tear, any accident, or act of God.		(b) allow the CRB to create or maintain a credit information file about the Client including credit history.	
17.	Default and Consequences of Default	19.8	The information given to the CRB may include:	
17.1	Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.		(a) Personal Information as outlined in 19.3 above;	
17.2	If the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements:		(b) name of the credit provider and that the Contractor is a current credit provider to the Client;	
	(a) incurred; and/or		(c) whether the credit provider is a licensee;	
	(b) which would be incurred and/or		(d) type of consumer credit;	
	(c) for which by the Client would be liable;		(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);	
	in regard to legal costs on a solicitor and own client basis, internal administration fees, the Contractor's Contract fees owing for breach of these terms and conditions (including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.		(f) advice of consumer credit defaults (provided the Contractor is a member of an approved OAC External Disputes Resolution Scheme), 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 Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);	
17.3	Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.		(g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;	
17.4	Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of an order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:	19.9	(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).	
	(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;		The Client shall have the right to request (by e-mail) from the Contractor:	
			(a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and	
			(b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.	
		19.10	The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.	
			The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.	
		20.	Service of Notices	
		20.1	Any written notice given under this Contract shall be deemed to have been given and received:	
			(a) by handing the notice to the other party, in person;	
			(b) by leaving it at the address of the other party as stated in this Contract;	
			(c) by sending it by registered post to the address of the other party as stated in this Contract;	
			(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;	
			(e) if sent by email to the other party's last known email address.	
		20.2	Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.	
		21.	Trusts	
		21.1	If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:	
			(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;	
			(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;	
			(c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:	
			(i) the removal, replacement or retirement of the Client as trustee of the Trust;	
			(ii) any alteration to or variation of the terms of the Trust;	
			(iii) any advancement or distribution of capital of the Trust; or	
			(iv) any resettlement of the trust property.	
		22.	General	
		22.1	Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.	
		22.2	The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.	
		22.3	These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts in that state.	
		22.4	Subject to clause 22.3, the Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price paid for the Services/Equipment).	
		22.5	The Contractor 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 Contractor.	
		22.7	The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.	
		22.8	The Client agrees that the Contractor may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Services/Equipment 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Contractor.	
		22.10	Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.	
		22.11	This Contract and any subsequent hire agreement between the Contractor and the Client, shall constitute as the entire agreement between the Contractor and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by the Contractor that is not embodied in this Contract.	
		22.12	The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.	
			Additional Terms & Conditions Applicable to Hire Only	
		23.	Hire Period	
		23.1	The Client acknowledges and accepts that the following minimum hire period is three (3) hours plus one (1) hour travel unless otherwise agreed.	
		23.2	The hire charges shall commence from the time the Equipment arrives at the Client's site and shall continue until the Equipment leaves the site, and/or until the expiry of the Minimum Hire Period, whichever last occurs.	
		23.3	The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.	
		23.4	No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Contractor confirms special arrangements in writing, in the event of Equipment breakdown provided the Client notifies the Contractor immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.	
		24.	Wet Hire	
		24.1	"Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Contractor.	
		24.2	In the event of Wet Hire, the operator of the Equipment remains an employee of the Contractor and operates the Equipment in accordance with the Client's instructions. As such the Contractor shall not be liable for any actions of the operator in following the Client's instructions.	