

TERMS & CONDITIONS OF SALE & HIRE



- 1. AGREEMENT**

The Agreement is made between the Company and the Customer and is constituted by:

 - a) these general terms and conditions (**General Terms**);
 - b) the relevant Additional Terms (Hire of Goods or Sale of Goods) provided;
 - c) any Special Conditions provided; and
 - d) any Quote, invoice or hire contract provided by the Company to the Customer(collectively, the **Agreement**).
- 2. ACKNOWLEDGMENT**

The Customer acknowledges and agrees that:

 - a) any contract terms, specifications or trading conditions commonly used by the Customer will not bind the Company regardless of when and in what circumstances they were served on the Company; and
 - b) such contract terms, specifications and trading conditions (if any) do not and will not under any circumstances, form part of the Agreement.
- 3. COSTS**
 - 3.1 The Customer must pay:
 - a) to the Company on a full indemnity basis all legal costs, charges, duties and other expenses incurred by the Company in enforcing the Agreement; and
 - b) any stamp duty assessed on the Agreement (if any).
- 4. SITE ACCESS**
 - 4.1 If the Agreement requires the Company to deliver the Goods to a Site, the Customer agrees to provide the Company with unrestricted access to the Site.
 - 4.2 The Customer is responsible for:
 - a) prior to the date of delivery providing to the Company a map of the Site clearly showing the required location for delivery of the Goods; ensuring there are no locked gates or devices preventing access to the Site;
 - b) providing an onsite contact person (including that person's contact details) who must be contactable at the proposed date and time of delivery;
 - c) providing a firm all-weather surface suitable for truck access to the Site; and
 - d) if required by the Agreement:
 - i. making the Goods available or accessible for servicing or maintenance at ground level during normal business hours without exposing the Company's Employees and Contractors or property to any unreasonable risk of personal injury, loss or damage; and
 - ii. ensuring the Goods remain unlocked for servicing or provide the Company with unlocking instructions (including any keys, passes or security codes required) at the commencement of the Hire Period and/or servicing schedule to ensure continued access to/into the Goods throughout the duration of the Hire Period and/or servicing schedule.
- 5. INDEMNITY FOR SITE ACCESS**
 - 5.1 The Price is based on unobstructed access to the Site.
 - 5.2 If access to the Site is restricted or obstructed, the Customer agrees to:
 - a) fully indemnify the Company (including the Company's Employees and Contractors) in relation to:
 - i. all claims, actions, demands, expenses and costs (including legal costs on a full indemnity basis) in any way arising out of damage to property other than the Goods;
 - ii. loss of or damages to the Goods; or
 - iii. the cost of relocating, lifting, loading, unloading and transporting the Goods elsewhere,caused directly or indirectly by the restricted or obstructed access to the Site; and
 - b) pay any additional costs incurred by the Company as a result of the restricted or obstructed access to the Site, including any waiting time or time taken by the Company in obtaining unobstructed access to the Site.
- 6. PRICE AND PAYMENT**
 - 6.1 Unless the Customer has an approved credit account with the Company, the Customer must pay the Price (or such component of the Price as is applicable):
 - a) within 7 days of the date of the tax invoice rendered by the Company or within such other period of time as may be notified to the Customer from time to time by the Company in writing; and
 - b) without any deduction or set-off (whether legal, statutory, equitable or otherwise and whether for a liquidated or unliquidated sum).
 - 6.2 The Customer acknowledges and agrees that if the Customer wishes to pay for the Price using a credit card, the Company may charge the Customer a credit card fee on the relevant amount of the Price which the Customer intends to pay using a credit card which the Company will advise the Customer of from time to time.
 - 6.3 In the assessment of any application for a credit account by the Customer and in the provision of any ongoing credit, the Customer agrees that the Company may take whatever action the Company considers appropriate to:
 - a) determine the current and ongoing credit profile of the Customer, by obtaining credit reports;
 - b) recover any debt (for a liquidated or unliquidated sum) regardless of whether the amount is disputed, including the use of a debt collection service to register any payment default by the Customer.
- 7. GST**
 - 7.1 In this clause 7, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.
 - 7.2 Unless otherwise expressly stated in writing in this Agreement, all amounts payable by the Customer in connection with this Agreement do not include an amount for GST.
 - 7.3 If GST is payable on any supply made by the Company under this Agreement, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply.
 - 7.4 Where the Customer is required by this Agreement to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment.
- 8. IMAGERY**

The Customer agrees to allow any images of the Goods to be taken and used for marketing purposes at any location to which the Goods may be supplied.
- 9. SUPPORT SERVICE**
 - 9.1 The Company offers its customers a voluntary, free of charge, 24 hours support service. The provision of the service is at the Company's discretion and will be dependent on the time when the service is required, the nature of the service requested and the Company's operational capabilities.
 - 9.2 The Customer acknowledges that the Company is not obliged or required to supply this service and the provision of this service is at the Company's discretion.
- 10. HEALTH & SAFETY, QUALITY AND ENVIRONMENTAL SYSTEMS DOCUMENTATION**
 - 10.1 If required by the Customer, the Company will provide electronic copies of any documentation maintained in the Company's Health Safety Environmental and Quality system.
 - 10.2 If the Company is required to register for access to external systems in order to comply with the Customer's health & safety requirements then any costs incurred by the Company in doing so will be a Variation and the Company will pass these costs onto the Customer and issue a further invoice to reflect the Variation.
- 11. SITE INDUCTIONS**
 - 11.1 If required by the Customer, the Company will comply with the Customer's reasonable requirements for site inductions.
 - 11.2 The Company will consider the time required to travel and attend inductions as a Variation unless such time is specifically itemised or noted as included on a Quote.
 - 11.3 The Customer must inform the Company at the earliest possible opportunity of any site induction requirements including the time required for the induction, location, days of the week and all other relevant information to allow the Company to inform the Company's Employees and Contractors.
- 12. WORK HEALTH & SAFETY LAWS**
 - 12.1 The Customer must:
 - a) comply with all Work Health and Safety Laws; and
 - b) assist the Company to comply with any Work Health and Safety Laws applicable to it in relation to this Agreement.
- 13. LIFT STUDIES**
 - 13.1 If required by the Customer, the Company will comply with the Customer's requirements for a lift study.
 - 13.2 The Company will consider the cost to prepare the lift study as a Variation unless already specifically itemised or noted as included on a Quote.
 - 13.3 The Customer must inform the Company at the earliest possible opportunity of any such requirement.

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- 14. DEMURRAGE (WAITING TIME) CHARGES**
- 14.1 The Company will charge and the Customer must pay for any Demurrage experienced by the Company and/or the Company's Employees and Contractors in the delivery and collection of the Goods.
- 14.2 Demurrage costs will:
- a) be charged to the Customer at the standard hourly rate as set out in the Quote; and
 - b) accrue until the Goods have been:
 - i. fully unloaded, with respect to delivery of the Goods; or
 - ii. fully loaded, with respect to collection of the Goods.
- 15. TRANSPORT RATES**
- The Customer acknowledges and agrees:
- a) that any rates given by the Company in relation to the transport of the Goods by the Company are subject to change at the Company's discretion; and
 - b) to pay the varied rate for any transport not yet performed by the Company if such rates are varied during the Hire Period.
- 16. PPSA**
- 16.1 Words and expressions used in this clause 16 which are not defined in the Agreement but are defined in the PPSA have the meaning given to them in the PPSA.
- 16.2 The Customer acknowledges that:
- a) the agreement for the hire of Goods under the Agreement creates a registrable security interest under the PPSA in the Goods and the proceeds of the Goods and that it has not agreed to postpone the time for attachment of that security;
 - b) the security interest created under the Agreement attaches to the Goods and the proceeds of the Goods in accordance with the PPSA;
 - c) value has been given for the creation of the security interest;
 - d) where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - e) the Company is not obliged to act in any way to dispose of or to retain any Goods which have been seized by the Company or any person nominated by the Company under its rights under the PPSA.
- 16.3 Without limiting anything else in the Agreement, the Customer consents to the Company effecting a registration on the Personal Property Securities Register (PPSR) in relation to any security interest created by or arising in connection with, or contemplated by, the Agreement, including in relation to the Goods. The Company's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 16.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Company for that purpose in relation to the Goods).
- 16.5 The Customer must indemnify, and on demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR, and for the enforcement of any rights arising out of any of the Company's security interests.
- 16.6 The Customer must not change its name, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.
- 16.7 The Customer must not without the Company's prior written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in it (or purport or attempt to purport to do any of those things) or permit any lien over the Goods.
- 16.8 The Customer must notify the Company as soon as it becomes aware if any personal property which does not form part of the Goods becomes an accession to the Goods or if any of the Goods is situated outside Australia or, on request by the Company, of the present location or situation of the Goods.
- 16.9 The Customer must authorise the Company to apply any money the Company receives from the Customer towards debts, charges and expenses in any priority the Company determines in its sole discretion for whatever reason, including in order to maintain the security interest created by the Agreement.
- 16.10 The Customer must immediately return the Goods if requested to do so by the Company following non payment of any amount owing by the purchaser to the Company or following breach of any other obligation to the Company.
- 16.11 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Company has given prior written consent.
- 16.12 For the purposes of section 20(2) of the PPSA, the collateral is the Goods provided by the Company to the Customer from time to time. The Agreement is a security agreement for the purposes of the PPSA.
- 16.13 The Customer acknowledges and agrees to:
- a) the Company effecting and maintaining a registration on the PPSR (in any manner the Company considers appropriate) in relation to any security interest contemplated or constituted by the Agreement in the Goods and the proceeds arising in respect of any dealing in the Goods (**Security Interest**); and
 - b) sign any documents and provide all assistance and information to the Company required to facilitate the registration and maintenance of any Security Interest.
- 16.14 The Customer undertakes to:
- a) not register a financing change statement in respect of a Security Interest without the Company's prior written consent;
 - b) 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 Company's prior written consent;
 - c) do anything, including executing any new document and providing any information, that is required by the Company to allow the Company to acquire or maintain one or more perfected security interests under the PPSA in respect of the Goods; and
 - d) to ensure that the Company's security position, and rights and obligations, are not adversely affected by the PPSA.
- 16.15 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest and:
- a) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply, and the Customer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; section 132; section 142 and section 143; and
 - b) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 129(2) and (3); and section 132.
- 16.16 Without limiting the clause 16.15, the Company is required to give a notice under the PPSA, including notice of verification statement, only if:
- a) the notice is obligatory under the PPSA; and
 - b) the giving of the notice cannot be excluded under the PPSA, and the Customer hereby waives any rights to receive any notices unless they are required to be given and cannot be excluded.
- 16.17 Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and the Company agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have, or but for this clause 16.17 may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- 16.18 The Company may apply amounts received in connection with the Agreement to satisfy obligations secured by a Security Interest in any way the Company determines in its absolute discretion.
- 16.19 The rights of the Company under the Agreement are in addition to and not in substitution for the Company's rights under any other applicable law (including the PPSA) and the Company may choose whether to exercise rights under the Agreement, and/or under such other law, as it sees fit. The Customer agrees that in addition to any rights of the Company under the PPSA, the Company may, if there is default by the Customer, seize, purchase, take possession or apparent possession, retain, deal with or dispose of any of the Goods, not only under the PPSA but also, as additional and independent rights, under the Agreement and the Customer agrees that the Company may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 17. LIABILITY**
- 17.1 If the Customer is a Consumer and the Company supplies PDH Goods or Services to the Customer, the Company acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by the Company and nothing in the Agreement should be interpreted as attempting to exclude, restrict or modify the application of those rights.
- 17.2 If the Customer is a Consumer and any goods or services supplied by the Company to the Customer are non PDH Goods or Services, the Company's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at the Company's discretion) to:
- a) in the case of Goods:
 - i. the replacement of the Goods or the supply of equivalent goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - iv. the payment of the cost of having the Goods repaired; and
 - b) in the case of Services:

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- i. the supplying the Services again; or
 - ii. the payment of the cost of having the Services supplied again.
- 17.3 If the Customer makes a claim against the Company which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, the Company's total aggregate liability arising in connection with all such claims shall be limited to an amount equal to the total value of the Goods or Services provided under the Agreement inclusive of GST.
- 18. PRIVACY**
- 18.1 In this clause, **Company** includes Instant Products Group Pty Ltd ACN 145 625 412 and its related body corporates (as that term is defined in the *Corporations Act 2001* [Cth]).
- 18.2 The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* [Cth]) regarding the Customer, may be collected, held, used and disclosed by the Company for the purposes set out in the Company's privacy policy (which privacy policy is available on the Company's website or on request from the Company). The Customer consents to the Company collecting, holding, using and disclosing any such personal information for all purposes specified in the Company's privacy policy.
- 19. DEFAULT AND TERMINATION**
- 19.1 A default event occurs (**Default Event**) if the Customer:
 - a) is in breach of any term of the Agreement (including if a review of the Customer's practices in respect of a cross-hire and the PPSA discloses that the Customer has failed, to comply with their obligations under the Agreement in relation to cross-hire or the PPSA):
 - i. which is not capable of remedy; or
 - ii. which is capable of remedy and the Customer has not remedied that breach within 14 days of receiving notice requiring that breach to be remedied, or such longer period as determined by the Company in consideration of the nature of the breach;
 - b) suffers from an Insolvency Event; or
 - c) if the Company receives a notice under section 64(b) of the PPSA which relates to the priority of the Company to the proceeds of goods.
- 19.2 If a Default Event occurs, the Company may, without limiting any of its other rights or remedies at law or in equity:
 - a) terminate the Agreement with immediate effect by giving the Customer written notice;
 - b) retain any deposit, security given or monies paid by the Customer to the Company or available through the enforcement of any guarantee, security or bond and apply this in reduction of any sum owed or owing by the Customer to the Company; or
 - c) in relation to Goods subject to a hire of goods agreement, enter the premises of the Customer or any third party to repossess the Goods.
- 19.3 If the Agreement is terminated under this clause 19:
 - a) in relation to an agreement for the hire of the Goods:
 - i. the Customer must pay to the Company as liquidated damages on account of loss of bargain the balance of the Price (if any) together with all costs and expenses incurred in connection with the termination;
 - ii. the Customer must immediately return the Goods to the Company's premises at the Customer's cost; and
 - iii. the Company may retain all monies paid to it under the Agreement.
 - b) in relation to an agreement for the sale of the Goods:
 - i. the Customer must not sell or part with possession (other than as required under clause 19.3b)ii) any Goods (other than any Goods which have been paid for in full);
 - ii. the Customer must, at its cost, immediately return to the Company all Goods (other than any Goods which have been paid for in full);
 - iii. the Company may enter the premises of the Customer or any third party to repossess the Goods not returned as required under clause 19.3b)ii); and
 - iv. all monies owed by the Customer to the Company shall become immediately due and payable; and
 - c) each party retains any rights, entitlements or remedies it accrued before termination including the right to pursue all remedies available to either party at law or in equity.
- 20. FORCE MAJEURE**
- 20.1 The Company will not be liable for any failure to perform or delay in performing its obligations under the Agreement if that failure or delay is due to a Force Majeure Event. If a Force Majeure Event exceeds 20 Business Days, the Company may immediately terminate the Agreement by written notice to the Customer.
- 20.2 Upon termination of the Agreement under this clause 20:
 - a) in relation to an agreement for the hire of the Goods:
 - i. the Customer must, at its cost, immediately return the Goods to the Company's premises or to such other address as required by the Company; and
 - ii. all monies owed by the Customer to the Company shall become immediately due and payable.
 - b) in relation to an agreement for the sale of the Goods:
 - i. the Customer must not sell or part with possession (other than as required under clause 19.3b)ii) any Goods (other than any Goods which have been paid for in full);
 - ii. the Customer must, at its cost, immediately return to the Company all Goods (other than any Goods which have been paid for in full);
 - iii. the Company may enter the premises of the Customer or any third party to repossess the Goods not returned as required under clause 19.3b)ii); and
 - iv. all monies owed by the Customer to the Company shall become immediately due and payable; and
 - c) each party retains any rights, entitlements or remedies it accrued before termination including the right to pursue all remedies available to either party at law or in equity.
- 21. INCONSISTENCY**
- 21.1 In the event of an inconsistency between any of the documents listed in clause 1, the following order of precedence will apply to the extent of the inconsistency:
 - a) Special Conditions;
 - b) the Additional Terms (Hire of Goods or Sale of Goods);
 - c) these General Terms; and
 - d) any Quote, invoice or hire contract provided by the Company to the Customer.
- 22. DISPUTES**
- 22.1 Any dispute, difference or claim relating to this Agreement (**Dispute**) will be dealt with in accordance with this clause.
- 22.2 If a Dispute arises, then either party may serve the other party with a notice setting out the details of the Dispute (**Dispute Notice**).
- 22.3 Within 14 days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties must confer in an attempt, using their reasonable endeavours, to resolve the Dispute in good faith, which conferral must be confidential and without prejudice.
- 22.4 If the Dispute is not resolved within 21 days of the service of the Dispute Notice, then either party may commence legal proceedings.
- 22.5 Each party will continue to perform its obligations under the Agreement pending resolution of the Dispute.
- 23. NOTICES**
- 23.1 Any notice given under this Agreement (**Notice**) will be deemed to have been properly given if:
 - a) posted or hand-delivered to the last known trading address of the recipient or to the address to which, in the case of the Customer, the Company normally renders its invoices to; or
 - b) sent by facsimile transmission to the last known facsimile number of the recipient; or
 - c) sent by email to the last known email address of the recipient, or to the email to which, in the case of the Customer, the Company normally renders its invoices to.
- 23.2 Notices are deemed to have been received:
 - a) if posted, 4 Business Days after posting;
 - b) if delivered by hand, on the day of delivery if delivered before 4.00 pm on a Business Day, and otherwise on the following Business Day;
 - c) if sent by facsimile, when the sender's fax machine produces a report confirming the successful transmission of the entire Notice including the relevant number of pages and the correct destination fax machine number or name of recipient if before 4.00 pm on a Business Day, otherwise on the following Business Day; and
 - d) if sent by email, when the sending device records the email as sent if before 4.00 pm on a Business Day, otherwise on the following Business Day, unless the sender receives an automated message that the email was not delivered.
- 24. MISCELLANEOUS**
- 24.1 If any party to the Agreement comprises two or more parties each of those parties is jointly and severally liable to perform the terms and conditions of the Agreement.
- 24.2 If any part of the Agreement becomes void or unenforceable then that part will be severed to the intent that all parts that are not void or unenforceable will remain in full force and effect.

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- 24.3 The Agreement is governed by and construed in accordance with the laws of Western Australia and the Customer and the Company submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 24.4 The Customer cannot assign or otherwise transfer the benefit of the Agreement without the prior written consent of the Company.

25. INTERPRETATION

25.1 In the Agreement:

- a) the singular includes the plural and vice versa;
- b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- c) a reference to any act, statute (State or Federal) and all regulations, by-laws, requisitions or orders of any federal, state, local or quasi-governmental body or authority or any other public body or authority (**Law**) includes a reference to that Law as varied, amended, novated or replaced from time to time;
- d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;
- e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- f) headings are inserted for convenience and do not affect the interpretation of the Agreement;
- g) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
- h) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

26. GLOSSARY

In the Agreement, unless otherwise stated:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent state or territory legislation.

Company means the entity which is hiring out or selling the Goods to the Customer as described in the quote, invoice or hire contract.

Company's Employees and Contractors means the Company's employees, , agents, contractors and sub-contractors.

Consumer has the meaning provided to it in Section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Customer means the entity which is hiring or purchasing the Goods from the Company as specified in any quotation, invoice or hire contract.

cross-hire means a hire of Goods from the Customer to a third party.

Cross-hire Rights means all the Customer's rights in respect of cross-hires, including the relevant chattel paper and all rights in respect of the relevant cross-hire agreement including rights under the PPSA.

Delivery Costs means all costs of delivery and collection (if applicable) of the Goods including packaging costs and transport costs and any taxes or charges applicable on such costs.

Demurrage means any waiting time beyond the waiting time allowed for in the Quote.

emergency call-out in relation to a toilet, means any service that a Customer requests to be provided on the same day as the request or where the service is required outside of Normal Business Hours.

Force Majeure Event means any delay in the Company designing, manufacturing and/or supplying the Goods or Services or any act necessary for the discharge or of compliance with the Company's obligations that directly results from one of the following events or circumstances:

- (a) fire, landslide, seismic activity, mudslides, named cyclones;
- (b) an act of war, riots or civil commotion and acts of public enemies;
- (c) an epidemic, pandemic, public health or safety emergency, quarantines, radiation and radioactive contamination; and
- (d) a state wide or industry wide industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing,

provided that the event or circumstance is not within the control of the Company or the Company's Employees and Contractors.

Goods means all of the items, goods, sold or hired out by the Company to the Customer.

Hire Charges means the fees and charges (as varied from time to time by the Company) payable by the Customer to the Company for the use of the Goods under this Agreement, whether contained in a Quote or otherwise.

Hire Period means the duration of the hire of the Goods (including weekends and public holidays) and more specifically being from the date of delivery to the Customer (or collection by the Customer) to the return of the Goods to the Company.

Insolvency Event in relation to an entity, means:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;
- (b) the entity suspending payment of its debts generally;
- (c) the entity being or becoming unable to pay its debts when they are due or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);
- (d) the entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all of the members of the entity; or
- (f) an administrator being appointed in accordance with the *Corporations Act 2001* (Cth),
- (g) in relation to an individual, means the individual being or becoming insolvent or committing an act of bankruptcy as those terms are used in the *Bankruptcy Act 1966* (Cth).

Loss includes any liability, claim, loss (including any consequential loss and loss of profit), damage, cost and expense.

Minimum Hire or Minimum Hire Period means the minimum hire period (if any) during which the Goods are to be hired, as provided in the agreement.

non-scheduled service in relation to a toilet, means a service that falls on a day or time that is not when the Company calculates the servicing was scheduled to next be performed.

Normal Business Hours means 6am–5pm WST Monday to Friday.

Order means any order or other request by or for the Customer to the Company to supply to the Customer any Goods or provide it with any Services (or both), whether the order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

PPSA means the *Personal Property Securities Act 2009* (Cth), as amended from time to time.

Price means:

- (a) the Hire Charges (as varied from time to time by the Company) for the Goods or the purchase price of the Goods (as the case may be);
 - (b) Delivery Costs (if any); and
 - (c) Service Charges (if any),
- including any GST payable on the above.

Receipt means:

- (a) where the Company delivers the Goods to a Site, then the time the Goods are unloaded onto or at the Site; or
- (b) where the Customer has elected to collect or arrange its own delivery of the Goods, then the time the Goods are loaded onto the Customer's mode of delivery (which includes third party transport engaged by the Customer).

scheduled service in relation to a toilet, means a service that is at the day or time the Company calculates the service is due to be carried out using their own scheduling system but in accordance with the frequency as agreed upon by the Customer.

Services means the services to be supplied by the Company or the Company's Employees and Contractors to the Customer under the Agreement, which may include the installation of Goods at the Site.

Servicing Charges means the servicing charges charged by the Company and noted in the Quote.

Specifications means any customisations or particular characteristics of the Goods which the Customer has requested from the Company in writing, and which the Company has agreed to in writing and has included it in a Quote.

Site means the premises of the Customer and any other premises where the Goods are to be delivered or the Services provided.

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Quote means invoice or quote provided by the Company to the Customer in relation to the Goods and/or Services (if any).

Variation means any modification, addition or other variation to, in or from the Price from time to time.

Work Health and Safety Laws means any applicable legislation and regulations relating to work health and safety, approved codes of practice and directions or notices issued by an applicable regulatory body.

ADDITIONAL TERMS: HIRE OF GOODS

These 'Additional Terms: Hire of Goods' are to be read in conjunction with the General Terms, and will only apply where the Company hires Goods to the Customer.

1. DEFINITIONS

Unless otherwise stated, all terms defined in the General Terms have the same meaning in these 'Additional Terms: Hire of Goods'.

2. HIRE

2.1 The Company will hire the Goods to the Customer for the Hire Period and the Customer agrees to take on hire of the Goods from the Company for the Hire Period on the terms and conditions of the Agreement.

2.2 The Company will advise the Customer prior to the time of hiring of the Goods if a Minimum Hire Period applies. If the Goods are returned before the expiration of the Minimum Hire Period, the Customer will remain liable to pay the hire charges for the balance of the Minimum Hire period.

3. HIRE CHARGES

The Customer acknowledges and agrees that:

- a) the Price covers the hire charges in relation to the Goods from the commencement date of the Hire Period until the Goods are returned to the premises of the Company as required by the Agreement;
- b) if the Company determines that the Goods have not been returned to the Company as required by the Agreement, the Customer will remain liable to pay hire charges at the rate provided in the Agreement (without prejudiced to the Customer's liability, if any, to pay any other amounts required by the Agreement) until the Goods are restored or replaced in accordance with the Agreement;
- c) hire charges will be calculated on the following basis:
 - i. charges commence on the day of delivery or collection irrespective of the time of day;
 - ii. the charges commence regardless of any additional works required onsite before use of the Goods can occur (eg if delivery is made and the Site is not ready to accommodate the Goods at the time of the delivery, the Customer will still be liable to pay the hire charges); and
 - iii. the charges are for the whole Hire Period and not the amount of time the Goods are used during the Hire Period;
- d) if required by the Company and included in the Agreement, the Customer must pay a deposit or other advance payment of the hire charges (**Deposit**). The Deposit amount will be determined by the Company prior to commencement of the Hire Period; and
- e) the Company will invoice the Customer for any Delivery Costs, on the first invoice during the Hire Period.

4. INSPECTION OF GOODS

4.1 The Customer must inspect the Goods within 48 hours of Receipt and must immediately, within this 48 hour period, notify the Company of any defect in the Goods, such notice to include evidence of any defect. Failure to do so is deemed to be an acknowledgment that the Goods are:

- a) fit for the purpose they are to be used for;
- b) in clean condition; and
- c) in good and substantial working order, repair and condition.

4.2 The Customer further acknowledges that they are aware of the proper use for which the Goods are designed.

5. LOSS OR DAMAGE OF GOODS DURING TRANSIT

5.1 The Company is not responsible for any loss of or damage to the Goods in transit unless the Company has included Delivery Costs within the Price and the Company has agreed to carry out the delivery of the Goods.

5.2 If any of the Goods are lost, stolen or damaged during the Hire Period or in transit when delivery or collection has been arranged by the Customer, then the Customer agrees to pay to the Company the cost of repairs or the replacement cost of the Goods (without prejudice to whatever other rights the Company has under the Agreement) and the Customer will remain liable to pay the Price until the Company has been paid the cost of repairs or the replacement cost.

6. DELIVERY

6.1 The Customer may request a specific date and time for delivery of the Goods in which case the Company will endeavour to meet such request subject to operational constraints.

6.2 The Company may provide an estimated delivery date and time.

6.3 If the Company provides an estimated delivery date and time, the Company will not be liable to the Customer or any other person, for any direct, indirect or consequential Loss or damage caused by a delay in delivery no matter how that delay occurred.

7. COLLECTION

7.1 The Customer may request a specific date and time for collection of the Goods in which case the Company will endeavour to meet such request subject to operational constraints.

7.2 The Company may provide an estimated collection date and time.

7.3 If the Company provides an estimated collection date and time, the Company will not be liable to the Customer or any other person, for any direct, indirect or consequential Loss or damage caused by a delay in collection no matter how that delay occurred.

7.4 Unless the Price specifically includes collection charges, the Company may require the Customer to return the Goods to the Company using the Customer's resources and at the Customer's expense.

8. USE OF THE GOODS

8.1 The Customer agrees to use the Goods in a skilful and proper manner and for the purpose for which the Goods were designed and are reasonably and safely capable of fulfilling.

8.2 The Customer will observe and comply, at its cost, with all notices, directions and legal requirements (including those of all authorities, statutes and regulations) in any way relating to the Goods.

8.3 The Customer must:

- a) supply at its own cost, all fuel necessary for operation of the Goods; and
- b) give the Company access to the Goods for inspection.

8.4 The Company may, from time to time, vary the type of use for which the Goods may reasonably be employed, or how the Goods are to be reasonably used, provided that it must give the Customer prior written notice, and any such variation shall not materially change the purpose for which the Goods were originally hired to the Customer.

8.5 The Customer must not without the prior written consent of the Company, create or allow to come into existence, or agree to create or allow to come into existence, an encumbrance (meaning any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest) or a security interest over, or which otherwise affects, the Goods.

8.6 The Customer must ensure that (unless the Company's prior written consent is obtained):

- a) the Goods are not exposed to a risk of loss, damage or detention;
- b) the Goods are not sold, transferred, sub-leased or otherwise disposed of;
- c) the Goods remain at all times in the sole possession of the Customer;
- d) the interest of the Company in the Goods is not prejudiced;
- e) the Company is not exposed to any liability in respect of or in connection with location, operation, use, maintenance or storage of the Goods;
- f) the Goods remain free from distress, execution or other legal process affecting title to, or possession of, the Goods;
- g) no replacement, alteration, modification or addition is made to the Goods which could mean that the Goods are no longer readily identifiable as the Company's property (including removing, changing, altering or defacing any name, name plate, identification number, trademark, or any other identifying mark or number on the Goods), or which may lead to a material reduction in the value, utility or remaining useful life of the Goods; and
- h) the credit of the Company is not pledged in respect of any maintenance or repair work undertaken on the Goods.

8.7 The Customer must do everything necessary to protect the rights of the Company in the Goods including, without limitation:

- a) disclosing to others, where appropriate, that the Company owns the Goods; and
- b) immediately informing the Company if it becomes aware of anyone seizing, attempting to seize, interfering or attempting to interfere with the Goods.

8.8 A person authorised by the Company may enter upon the premises where the Goods are located at reasonable times, with or without prior notice, to do any one or more of the following:

- a) inspect the condition of the Goods (for which purpose the Company or its employees, agents or experts may carry out any tests on the Goods (or any part thereof) that the Company reasonably requires); or
- b) repossess, remove or recover Goods that the Company is entitled to repossess, remove or recover under this Agreement; or
- c) determine whether the terms of this Agreement are being complied with; or
- d) exercise any other right of the Company under this Agreement.

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9. MAINTENANCE, ALTERATION AND REPAIRS

9.1 The Customer must not undertake, or cause to undertake, any repairs, servicing, alteration or maintenance (other than general cleaning) to the Goods without the prior written consent of the Company, and which, if consented to by the Company, shall be at the cost of the Customer.

9.2 The Customer must, subject to clause 9.1

- a) keep and maintain the Goods at its own cost in a clean and undamaged condition and in good and substantial working order and repair; and
- b) service the Goods at its own cost, in a skilful and proper manner and supply all oil and grease necessary for service and maintenance.

10. SERVICING OF GOODS BY COMPANY

The Customer accepts that:

- a) in relation to scheduled services by the Company, a 2-day grace period either side of the scheduled service date is provided for; and
- b) in relation to non-scheduled services by the Company and emergency call-outs, these attract a higher rate and will only be performed at the request of the Customer.

11. AFFIXATION

The Customer must ensure that:

- a) the Goods including any part of the Goods, are not affixed to any real property; and
- b) nothing is done or omitted to be done which would place the Company's ownership of the Goods at risk.

12. RELOCATION OF GOODS

The Customer must not move or relocate the Goods within a site or from one site to another without the prior written consent of the Company and the Customer must at all times ensure that the Company is aware of the location of the Goods.

13. BREAKDOWN OF GOODS

13.1 If a breakdown or failure of the Goods is caused by the Company or the Company's Employees or Contractors, the Company will at its expense, restore the Goods to working order as soon as reasonably possible.

13.2 The Customer agrees that the Company will not be liable to the Customer or any other person for any direct, indirect or consequential Loss or damage caused by breakdown or failure of the Goods, regardless of the cause.

13.3 If a breakdown or failure of the Goods is caused by any person other than the Company or the Company's Employees or Contractors, then the Customer must immediately notify the Company upon becoming aware of the breakdown or failure.

14. RETURN OF GOODS - COSTS

14.1 At the end of the Hire Period, the Customer must return the Goods to the Company in the same, or in substantially the same condition, as at the commencement of the Hire Period.

14.2 If on return of the Goods to the Company the Goods are found by the Company not to be in the same or in substantially the same condition as at the commencement of the Hire Period, then the Customer must pay to the Company all costs incurred by the Company in:

- a) restoring the Goods to a clean condition and to good and substantial working order and repair so as to be suitable for rehire; or
- b) replacing the Goods, if reasonably necessary.

15. CROSS-HIRE OF GOODS

15.1 GENERAL

The hiring of Goods under the Agreement is personal to the Customer and the rights of the Customer are not assignable to any person or company. The Customer must not on-hire the Goods to a third party (**Third Party**) without the prior written consent of the Company, which the Company shall be entitled to refuse at its sole discretion without any reason given. If the Company consents to the on-hire then the following provisions of this clause 15 will apply.

15.2 Dealings and cross-hire

- a) The Customer must take all steps, including registration under the PPSA, as may be required to:
 - i. ensure that any security interest arising under or in respect of the cross-hire is enforceable, registered and remains effective under the PPSA;
 - ii. ensure that the security interest of the Company is enforceable at all times subject only to any rights of a third party contemplated by the Agreement;
 - iii. prevent the security interest from vesting in the third party or anyone else;
 - iv. enable the Customer to gain (subject always to the rights of the Company) first priority (or any other priority agreed to by the Company in writing) for the security interest; and
 - v. enable the Company and the Customer to exercise their respective rights in connection with the security interest.
- b) The Company may appoint a consultant (including an accountant or lawyer) (**Consultant**) to audit the Customer's compliance with

this clause 15.2 (Dealings and cross-hire), and the Customer must give the Consultant access to all relevant records and documents of the Customer in respect of the cross-hire of the Goods.

- c) The Company must instruct the Consultant not to disclose to the Company the name of the Third Party unless the Agreement expressly permits or requires the identity of the Third Party to be disclosed to the Company.
- d) If the Consultant determines that there has been a breach by the Customer of this clause 15.2 (Dealings and Cross-hire), the Customer must indemnify the Company for the costs of the Consultant.
- e) The Customer is not obliged to disclose the name of the Third Party to the Company unless there is a Default Event (as that term is defined in clause **Error! Reference source not found.** 'Default and termination' below). At any time after there is a Default Event, the Customer must ensure that the Company is provided at all times with up-to-date information about every cross-hire, including the identity of any relevant Third Party, the terms of the cross-hire, the state of accounts and payment between the Customer and the relevant Third Party, and the location and condition of the Cross-hire Rights.
- f) To assure performance of its obligations under the Agreement, the Customer irrevocably appoints the Company and each of the Company's officers (jointly and severally) as the Customer's attorney to do in the Customer's name all acts and things which the Customer should have done under the Agreement but which it has not done after being provided with notice of the act or thing which is required to be done.

15.3 SECURITY INTEREST OVER CROSS-HIRE RIGHTS

- a) The Customer must, at its cost:
 - i. do everything the Customer can to make sure that the Cross-hire Rights are not forfeited, vested, extinguished, cancelled or varied; and
 - ii. do any further act and execute any further documents which the Company may reasonably require in order to protect the Company's title to the Goods and its rights under the Agreement, the PPSA and in respect of the Cross-hire Rights.
- b) The Customer must not do the following without the Company's prior written consent:
 - i. transfer or assign the Cross-hire Rights; or
 - ii. create another security interest in connection with the Cross-hire Rights, or allow one to arise other than a security interest created under clause 15.2 (Dealings and cross-hire); or
 - iii. waive any of the rights in relation to Cross-hire Rights or release any person from their obligations in connection with the Cross-hire Rights in a manner that may adversely affect the interests of the Company in any Cross-hire Rights.
- c) If the Company consents to another security interest in the Cross-hire Rights and the Company asks, then the Customer must enter into an agreement, on terms acceptable to the Company, regulating the priority between the Agreement and any other security interest.
- d) If a Default Event occurs, the Company may do anything the Company is entitled to do at law or in equity as the holder of a security interest including but not limited to suing the Customer.

16. RISK AND TITLE

16.1 The Customer acknowledges that:

- a) the Company retains full ownership of the Goods and title to the Goods throughout the Hire Period, and at no stage does title to the Goods pass to the Customer; and
- b) the Customer has no interest in the Goods other than as bailee of the Goods.

16.2 Risk in the Goods transfers to the Customer:

- a) if the Company is responsible for the delivery, from the time that the Goods arrive at the Site; and
- b) if the Customer is responsible for the delivery, or for the collection of the Goods, from the time that the Customer (or its delivery contractor) takes possession of the Goods or collects the Goods.

16.3 Risk in the Goods returned to the Company will pass to the Company on written confirmation of receipt of the Goods by the Company.

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17. INSURANCE

17.1 The Customer must, at its own expense and as a minimum, maintain during the Hire Period with a reputable insurer the following insurance which indemnifies the Company for any Loss:

- a) insurance covering damage to or Loss or theft of the Goods during the Hire Period for an amount not less than the full replacement value of the Goods; and
- b) public and products liability insurance for damage and Loss caused by the Goods to a value of:
 - i. \$20,000,000 for any one loss or claim in respect of public liability; and
 - ii. \$20,000,000 for any one loss or claim and in the aggregate in respect of products liability,

(Insurance Policies).

17.2 The obtaining of any insurance by the Customer in accordance with this clause 17 does not in any way release, reduce, limit or otherwise affect any obligations, liabilities or warranties of the Customer under any other provision of the Agreement or otherwise at law.

17.3 The Customer must give the Company a copy of the Insurance Policies and certificates of currency for each Insurance Policy on written request by the Company.

17.4 The Customer must comply with the terms of the Insurance Policies, and the Customer must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.

18. IPG WAIVER

18.1 Subject to clause 18.3, the Customer must pay to the Company a compulsory non-refundable damage waiver fee in addition to the Price (IPG Waiver Fee).

18.2 The IPG Waiver Fee is equal to 14% of the total Hire Charges or \$5000 plus GST, whichever is greater. The Company may, at its sole discretion, vary the rate for calculating the IPG Waiver Fee from time to time.

18.3 The Company may, at its sole discretion, waive the IPG Waiver Fee if before the commencement of the Hire Period the Customer:

- a) effects and maintains during the Hire Period the Insurance Policies (see clause 17); and
- b) provides the Company with copies of the Insurance Policies and certificates of currency for each Insurance Policy before the commencement of the Hire Period.

18.4 For the avoidance of doubt, the Customer is not automatically entitled to a waiver of the IPG Waiver Fee upon providing the documents listed in clause 18.3.

LOSS AND DAMAGE COVERED BY THE IPG WAIVER

18.5 Upon payment of the IPG Waiver Fee, the Customer will not be liable to pay the costs of repair of the Goods where such costs are less than or equal to \$5000 (excl GST) and:

- a) the loss of or damage to the Goods was caused by fire, storm, collision, theft or burglary;
- b) reasonable precautions were taken by the Customer to prevent the theft, loss or damage to the Goods;
- c) the theft, loss of or damage to the Goods was not caused by any act or omission of the Customer;
- d) in the case of theft, the Customer promptly reported the incident to the police and provided the Company with a copy of the relevant written police report;
- e) the Customer cooperates with the Company by providing the Company with details and evidence of the incident; and
- f) the theft, loss of or damage to the Goods does not fall into one or more of the categories set out in clause 18.6;

LOSS AND DAMAGE NOT COVERED BY THE IPG WAIVER

18.6 The IPG Waiver does not apply to and cover any loss or damage to the Goods where such loss or damage is caused by any act or omission of the Customer or the Customer's employees, agents, contractors, visitors or invitees including:

- a) misuse, abuse or overloading of the Goods or any components thereof;
- b) wrongful conversion of the Goods or any components thereof;
- c) a breach of the Agreement;
- d) a breach of any statutory laws and regulations;
- e) loss or damage of hoses, electric cords, valves, water connection fittings and other similar accessories;
- f) damage caused to tyres and tubes as a result of the tyres or tubes being hit, bruised or cut;
- g) glass breakage;
- h) lack of lubrication or other normal servicing of the Goods;
- i) loss or damage to the Goods whilst located, used, loaded, unloaded, lifted or transported on land or over water, wharves, bridges or vessels of any kind;
- j) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use

of under-rated or excessive length of extension leads on electrical powered tools and machines;

- k) exposure to any corrosive substance (eg caustic, cyanide, salt water, acid, etc);
- l) theft of the Goods where the Goods have not been secured or locked;
- m) loss or damage to the Goods during transport, except where transported by the Company;
- n) vandalism where the Goods have not been properly secured;
- o) loss or damage of any kind to hot water service units included with the hire of portable showers;
- p) adhesive stickers, tape or similar substances, placed onto external or internal wall surfaces;
- q) the removal or adjustment of the Company's signage, stickers or asset identification plates;
- r) the modification in any way of the electrical components or wiring that form part of the Goods; and
- s) failure to use the Goods for the intended purpose or in accordance with the Company's instructions or the manufacturer's instructions.

18.7 The Customer acknowledges and agrees that the IPG Waiver Fee:

- a) is a charge payable by the Customer in addition to the Price and is calculated in accordance with clause 18.2;
- b) is for the purpose of, and is limited to, covering the items listed in clause 18.5 only; and
- c) the IPG Waiver is not insurance and does not constitute consideration for loss or damage to the Goods or any part of the Goods caused by one or more of items listed in clause 18.6.

19. REFUND AND CANCELLATION POLICY

19.1 RIGHT TO CANCEL

Subject to this clause 19, the Customer may by notice to the Company cancel the Agreement prior to the end of the agreed Hire Period.

19.2 WHERE A MINIMUM HIRE PERIOD APPLIES

If the Hire Period is for a Minimum Hire Period and the Customer cancels the Agreement prior to the end of the Minimum Hire Period, then the Customer must pay the Company a cancellation fee which is equal to that part of the Price relating to the balance of the Hire Period.

19.3 WHERE THERE IS NO MINIMUM HIRE PERIOD

If the Hire Period is not for a Minimum Hire Period and the Customer cancels the Agreement prior to the end of the Hire Period, then the Customer must pay to the Company a cancellation fee determined as follows:

- a) for cancellations within 48 hours of the commencement of the Hire Period – 25% of the Price or \$100 (excl GST), whichever is the greater;
- b) within 24 hours of the commencement of the Hire Period – 50% of the hire contract price or \$100 excl GST, whichever is the greater; and
- c) on the day of Receipt – 70% of the hire contract price or \$100 excl GST, whichever is the greater.

20. PORTABLE SANITATION SERVICING

20.1 In this clause 20

ordinary use in relation to Units, means a single Unit must service no more than 10 workers in a 38 hour working week with servicing on a weekly (7 day) frequency. The Unit must be operated and maintained in accordance with the manufacturer's specifications. Exceeding these limits will result in unsanitary conditions.

Units means any Goods which are portable sanitation units.

20.2 If specifically noted on the Quote, the Company agrees to:

- a) supply the sanitation equipment and/or provide the type of servicing agreed upon at the commencement of the Hire Period;
- b) maintain the Units in a good working order under ordinary use; and
- c) schedule regular servicing of the Units as agreed upon at the commencement of the Hire Period.

20.3 If the Company has supplied maintenance servicing for the Units, then the Customer agrees that the Company is not liable for any loss or damage caused by the Company's failure to render such maintenance where such failure is due to reasons beyond the Company's control.

20.4 The Customer agrees to:

- a) the scheduling of regular servicing by the Company of the Units but as a minimum, the servicing frequency will be in accordance with the relevant government health department's requirements of no more than 14 days between services;
- b) pay the Servicing Charges including payment of a Servicing Charge upon termination of the Agreement to ensure the Units are clean and ready for transport, free of waste or rubbish of any kind;
- c) pay the Company's additional charges for non-scheduled services and/or emergency call outs where such services or call outs are requested by the Customer;

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- d) ensure the Goods are not subjected to use other than that prescribed under the term "ordinary use";
 - e) notify the Company of any changes to the Customer's required servicing intervals at least 5 Business Days before the next scheduled service;
 - f) notify the Company immediately and discontinue to use any of the Units if they become unsafe or in disrepair for any reason; and
 - g) agree to pay for any removal and disposal of sharps mainly needles that are found in or around the Unit at a cost of \$50 per 500ml sharp container (price includes disposal).
- 20.5 The Company is not liable for any incidental or consequential damage caused by delays in the repairs, maintenance or replacement of the Units.
- 21. WATERLESS URINALS**
- 21.1 The Company may provide waterless urinals as part of the Goods (**Urinals**).
- 21.2 Subject to clause 9, the Customer is responsible for all on-going maintenance of the Urinals throughout the Hire Period and such maintenance must be carried out in accordance with the manufacturer's requirements.
- 21.3 The Company can provide replacement components for the Urinals on request and if provided, the cost of the replacement components will be a Variation.

ADDITIONAL TERMS: SALE OF GOODS

These 'Additional Terms: Sale of Goods' are to be read in conjunction with the General Terms and will only apply where the Company sells Goods to the Customer.

1. DEFINITIONS

Unless otherwise stated, all terms defined in the General Terms have the same meaning in these 'Additional Terms: Sale of Goods'.

2. SALE OF GOODS

The Company will sell the Goods to the Customer, and the Customer agrees to purchase the Goods for the Price, in accordance with the terms and conditions of the Agreement.

3. CANCELLATION OF ORDERS

Upon placing an Order to purchase any Goods, the Customer must pay the Company a deposit (if any) nominated by the Company at the time of Order (**Deposit**). The Customer will forfeit the Deposit if the Order is cancelled after 24 hours from the date of the Agreement.

4. LOSS OR DAMAGE OF GOODS DURING TRANSIT

The Company is not responsible for any loss of or damage to the Goods in transit unless the Company has included Delivery Costs within the Price and the Company has agreed to carry out the delivery of the Goods.

5. TITLE AND RISK OF GOODS

5.1 Title in any Goods supplied under the Agreement transfers to the Customer on payment by the Customer for the Goods.

5.2 The risk of loss or damage to the Goods passes to the Customer on acceptance of the Goods. Acceptance of the Goods will occur on Receipt of the Goods by the Customer.

6. INSPECTION OF GOODS

6.1 Before the Company will release the Goods to the Customer, the Customer must acknowledge in writing that they have been given the opportunity and/or have inspected the Goods, are satisfied that the Goods are fit for the purpose they are to be used for, are in clean condition and are in good and substantial working order, repair and condition. The Customer further acknowledges that they are aware of the proper use for which the Goods are designed. Inspection of the Goods is to occur at the Company's production facilities located in Landsdale or Wangara.

6.2 The Company may, at its sole discretion, offer a photographic inspection process of the Goods if the Customer waives their right to attend the production facilities to inspect the Goods.

7. WARRANTY

7.1 This clause 7 will only apply if the Company is the manufacturer of the Goods.

7.2 The Company warrants that the Goods have been manufactured:

- a) in a proper and workmanlike manner;
- b) in accordance with the Agreement; and
- c) using materials that are of merchantable quality and reasonably fit for the purpose specified in the Agreement.

7.3 Unless the Agreement provides otherwise, the Company further warrants that in relation to any materials and services which do not comply with clause 7.2 above (**Defects**), the Company will make good the Defects which are notified to the Company in writing within 12 months of the earlier of:

- a) the date on which the Customer takes possession of the Goods; and
- b) when the Goods leave the Company's premises.

7.4 For the avoidance of doubt, the warranty offered in clause 7.2 does not apply to Defects caused or contributed by the Customer or any of the Customer's employees, agents, or contractors.

7.5 The warranty offered in clause 7.3 above will apply unless the same or a similar warranty is provided in relation to the materials and services, by a third party.

8. NOTIFICATION OF CLAIMS

8.1 The Customer must notify the Company immediately if it becomes aware of:

- a) any claim; or
- b) any death, serious injury or serious illness.

in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

8.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:

- a) any claim; or
- b) any death, serious injury or serious illness.

in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

8.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:

- a) not make any representation to any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
- b) take all steps and do all things necessary to promptly pass on to the Company any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist the Company to comply with its obligations under the Australian Consumer Law;
- c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of the Company any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and

8.4 not agree to settle any claim made by a Consumer without the prior written consent of the Company.

TERMS & CONDITIONS OF SALE & HIRE



SPECIAL CONDITIONS: HIRE OF TRANSPORTABLE BUILDINGS & SEA CONTAINERS

These 'Special Conditions: hire of transportable buildings & sea containers' are to be read in conjunction with the General Terms and will only apply where the Company is hiring transportable buildings and/or sea containers to the Customer.

1. DEFINITIONS AND INTERPRETATION

In these 'Special Conditions: hire of transportable buildings & sea containers':

- a) a reference to conditions is a reference to these Special Conditions: hire of transportable buildings & sea containers';
- b) a reference to clause is a reference to a clause of these 'Special Conditions: hire of transportable buildings & sea containers'; and
- c) unless otherwise stated, all terms defined in the General Terms have the same meaning in these special conditions.

2. CUSTOMER COLLECTIONS & RETURNS

2.1 The Customer is responsible for the cost of loading and unloading of the Goods:

- a) at the Company's premises; and
- b) at the Customer's premises,

unless the Company has expressly noted and included such costs within the Price.

2.2 The Customer acknowledges that the Company does not allow forklift loading or unloading of portable buildings under any circumstances.

3. CLEANING – OFF-HIRE

The Customer acknowledges that upon the termination or expiration of the Hire Period, the Customer will be charged the cost of cleaning the Goods. Unless expressly provided for in a Quote, the cost of cleaning the Goods is not included in the Price.

4. ELECTRICAL TESTING & TAGGING

4.1 OFF-HIRE

The Customer acknowledges that upon the expiration or earlier termination of the Hire Period, the Goods will be subject to certification/testing of electrical circuits & RCD units. Unless expressly provided for in a Quote, the cost of this certification/testing is not included in the Price.

4.2 DURING THE HIRE PERIOD

The Customer is responsible for ensuring the Goods remain tested and tagged during the Hire Period. The Customer will ensure the Goods are tested and tagged in accordance with AS3012:2010 (as varied or replaced from time to time). The Customer must, upon the request of the Company, provide log book records and evidence of the testing and tagging in accordance with the requirements of AS3012:2010 (as varied or replaced from time to time).

5. LEVELLING

The Customer acknowledges that:

- a) the Company provides to the Customer the Goods on the understanding that the Site will be level. The Company will not level the Goods unless this service is expressly provided for in a Quote; and
- b) the transport contractors used by the Company for delivery of the Goods are not capable of providing levelling services to the Customer.

6. FOOTINGS & TIE DOWNS

Portable buildings and sea containers must be tied down to suit the wind region of the Site. It is the Customer's responsibility to ensure that any hired portable buildings and sea containers are correctly tied down in accordance with the Company's structural engineering requirements in relation to such Goods. Subject to availability, the Customer may purchase from the Company and the Company may supply at additional costs, footings and tie downs to meet the requirements of this clause.

7. NATIONAL CONSTRUCTION CODE

7.1 If the Goods must comply with the National Construction Code (NCC), then the Customer is responsible for ensuring such compliance, including the installation of any access ramps, handrails, or landing systems to in accordance with the requirements of AS1428 (as varied or replaced from time to time).

7.2 The Customer acknowledges that unless expressly provided for in a Quote, the Company does not include steps, ramps, landings or handrail systems with the Goods.

7.3 If steps, ramps, landings and/or handrails systems are expressly provided for in a Quote and are to be provided and installed by the Company with the Goods, then the Company warrants that those steps, ramps, landings and/or handrails systems will be installed in accordance with the requirements of AS1428 (as varied or replaced from time to time).

8. AIR CONDITIONERS

8.1 The Customer:

- a) acknowledges that the Company may be required to remove working components from the 'cage' of all box style, wall mounted air conditioner units before collection or transport of the buildings can occur. The Customer accepts responsibility for the re-installation of the air conditioning units once the building is delivered and secured at the Site;
- b) must install any such air conditioning units in accordance with the manufacturer's instructions, a copy of which is available upon request. The Customer must ensure the earth wire is re-instated on the air conditioning units before operation; and
- c) is responsible for all routine maintenance of air conditioning units hired out to the Customer at its own cost, but subject to clause 9 of the 'Additional Terms: Hire of Goods'. Routine maintenance must be carried out in accordance with the manufacturer's instructions, a copy of which is available upon request.

8.2 Subject to clause 8.2, if any hired air conditioning units require repair during the Hire Period, then the Company will be responsible for:

- a) all charges associated with the repair work; and
- b) where the Site is within an 80 km radius of the GPO of Perth, all charges associated with travel to and from the Site by the Company (or the Company's Employees or Contractors). If the Site is outside this radius, then all charges associated with travel to and from the Site by the Company (or the Company's Employees or Contractors), will be the Customer's responsibility.

8.3 The Customer will be responsible for, and the Company will not be liable to pay, for any costs associated with repair work of any hired air conditioning units where such repair work is a direct result of the negligent act or omission of the Customer or any of the Customer's employees, agents, contractors, invitees or visitors. The Customer will reimburse the Company for any such costs upon demand, on a full indemnity basis.

9. ALARM SYSTEMS

The Customer acknowledges that:

- a) any Goods which include an alarm system require commissioning by the Company's nominated security installer;
- b) the Customer is responsible for any charges associated with the commissioning of the alarm system; and
- c) unless expressly provided for in a Quote, the Price does not include the cost of commissioning the alarm system.

10. CONNECTION OR DISCONNECTION OF SERVICES

10.1 The Customer acknowledges and agrees that unless expressly included in a Quote:

- a) the Company is not responsible for any connection or disconnection of services to the Goods; and
- b) the Customer is responsible for arranging at its cost the connection and disconnection of services to the Goods; and
- c) the Customer must ensure all services are physically disconnected from the Goods before the Goods are returned to the Company at the expiration or earlier termination of the Hire Period.

11. WATER QUALITY

11.1 The Customer is responsible for ensuring the quality of water used to supply any hot water service, urn or boiling oversink water units meets the manufacturer's specifications. Failure to provide suitable quality water may damage the Goods beyond repair.

11.2 The Customer acknowledges that any damage to the Goods resulting from or caused by the Customer's failure to comply with clause 11.1 is not covered under the IPG Waiver.

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12. DOCUMENTATION AND RELATED SERVICES

12.1 The Customer acknowledges and agrees that unless expressly noted as included in the Quote the following will not be included in the Price and should the Customer require any of the following from the Company, then this will be deemed a Variation and appropriate charges will be payable by the Customer:

- a) provision of structural engineering certifications;
- b) submission of documents via a document control service;
- c) any preparation or completion of health and safety related documentation; and
- d) any amendment or variation of the Company's standard designs including the placing of the Company's drawings into a Customer's format.

TERMS & CONDITIONS OF SALE & HIRE



SPECIAL CONDITIONS: SALE OF TRANSPORTABLE BUILDINGS & SEA CONTAINERS

These 'Special Conditions: sale of transportable buildings & sea containers' are to be read in conjunction with the General Terms and will only apply where the Company is selling transportable buildings and/or sea containers to the Customer.

1. DEFINITIONS

In these 'Special Conditions: Sale of Transportable buildings & sea containers':

- a) a reference to conditions is a reference to these 'Special Conditions: Sale of Transportable buildings & sea containers';
- b) a reference to clause is a reference to a clause of these 'Special Conditions: Sale of Transportable buildings & sea containers'; and
- c) unless otherwise stated, all terms defined in the General Terms have the same meaning in these special conditions.

2. DEPOSIT

2.1 If required by the Company, the Customer must pay a deposit of 20% of the Price at the time of submitting the Order.

2.2 If the Customer is required to pay a Deposit under clause 2.1, the Customer acknowledges and agrees that:

- a) the Company will not commence work until the Deposit is paid in full; and
- b) any time frames quoted, specified or implied in the Agreement are subject to adjustment from the date on which payment of the Deposit is received in full into the Company's nominated account.

2.3 If,

- a) the Company does not accept the Offer; or
- b) prior to the Company commencing any work, the Customer cancels the Order,

the Company will refund the Deposit.

3. CUSTOMER COLLECTIONS

3.1 The Customer is responsible for the cost of loading and unloading of the Goods:

- a) at the Company's premises; and
- b) at the Site,

unless the Company has expressly noted and included such costs within the Price.

3.2 The Customer acknowledges that the Company does not allow forklift loading or unloading of portable buildings under any circumstances.

4. AIR CONDITIONERS

The Customer acknowledges and agrees that the Company may be required to remove working components from the 'cage' of all box style, wall mounted air conditioner units before collection or transport of the buildings can occur. The Customer accepts responsibility for the re-installation of these units once the building is delivered to the Site. The Customer must install any such unit in accordance with the manufacturer's instructions (a copy of which is available upon request). The Customer must ensure the earth wire is re-instated on these units before operation.

5. STRUCTURAL ENGINEERING

THE COMPANY DOES not provide project specific structural engineering certifications (**Certifications**) unless expressly included on a Quote. The Customer acknowledges that Certifications may delay a project and/or give rise to additional costs for modifications required on the production of the Goods.

6. ENERGY EFFICIENCY

6.1 The Customer acknowledges that:

- a) the Company does not provide goods compliant with Part J of the National Construction Code (**NCC**) unless such goods are expressly noted on a Quote or Specifications as being included; and
- b) energy efficiency assessments for compliance against the NCC are not included unless expressly itemised or noted as included on a Quote.

6.2 The Customer acknowledges and agrees that if the Customer requires or requests an energy efficiency assessment for the purposes of compliance with the NCC:

- a) this process may give rise to changes required to the project scope and/or Specifications in order to achieve compliance with the NCC; and
- b) such changes will be considered a Variation.

7. ALARM SYSTEMS

The Customer acknowledges and agrees that:

- a) that any Goods which include an alarm system require commissioning before use;
- b) the Customer is responsible for any charges associated with the commissioning of the alarm system; and
- c) the Agreement does not include the cost of commissioning the alarm system unless expressly provided for in the Quote.

8. CONNECTION OF SERVICES

The Customer acknowledges that unless expressly noted as included in the Quote:

- a) the Company is not responsible for any connection of services (such as water, sewerage, electricity and internet) to the Goods; and
- b) the Customer is responsible for arranging at its cost the connection of any such services to the Goods.

9. FURNITURE, APPLIANCES & FIXTURES

9.1 If expressly specified in the Agreement, the Company will supply to the Customer goods such as furniture, appliances or other loose fittings that may form part of the Goods (**Additions**). All Additions are at the risk of the Customer.

9.2 The Customer must arrange at its cost the packing of all Additions and other loose items inside the building(s) before transport. The Company does not offer the service of preparing, packing or storing these items.

9.3 The Company does not warrant that damage will not occur to the Additions or internal finishes of a building when Additions are supplied loose and packed within a building for transport to the Site.

10. PROJECT DOCUMENTATION

10.1 Where the Company manufactures the Goods (or any part of the Goods) for the Customer, the Company will provide to the Customer a standard documentation set, a sample of which can be provided on request (and may include for example, project specifications and working drawings).

10.2 Unless expressly noted in a Quote, any request for documentation not listed in the standard documentation set including electrical line diagrams or mechanical or hydraulic layouts will be considered as a Variation.

11. GOODS STORAGE

11.1 Upon completion of manufacture, the Goods will be stored by the Company at no additional charge for a period of 14 days which will begin from the date of the earlier of the issuing of:

- a) a notice of compliance; or
- b) final invoice

(**Free Storage Period**).

Multiple buildings for a single customer will be considered on a job-by-job basis and storage fees applied on a per job basis.

11.2 The Customer must pay a storage fee for any storage of the Goods required past the Free Storage Period (**Storage Fee**).

11.3 Calculation of Storage Fees will be made on a weekly basis or part thereof, with a per day cost of 1/7th of the weekly charge.

11.4 The weekly Storage Fee will be \$200 (plus GST) unless otherwise agreed in writing. Invoiced on a monthly basis. The Customer must pay the storage fees without deduction or set-off (whether equitable or otherwise). The Customer is responsible for providing a purchase order number prior to payment (if required) to ensure payment occurs without delay.

12. NOTICE OF COMPLETION AND COMPLIANCE

Upon completion of the Goods or the Goods being ready for delivery to, or collection by, the Customer, the Company will issue a notice of completion and compliance (**Notice**) to the Customer. The Company will not release the Goods to the Customer until the Customer signs the Notice and provides a signed copy of the Notice to the Company.

13. ONSITE WORKS

13.1 The Customer acknowledges and agrees that unless expressly itemised or noted as included in a Quote, the Price does not include and makes no allowance for any onsite works (for example provision and/or installation of rubbish bins, temporary fencing or site clean after the completion of any work or the supply of Goods under the Agreement).

13.2 If a Quote expressly provides for the provision of onsite works to be carried out at a Site by the Company or the Company's Employees or Contractors (**Onsite Works**), then the following process will apply:

- a) upon completion of the Onsite Works (or any part of the Onsite Works where such works involve multiple types of works) and before each contractor leaves the Site, the Customer must:
 - i. promptly inspect the Goods and the completed Onsite Works; and

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- ii. subject to clause 13.2b), if the completed Onsite Works have been carried out in accordance with the Agreement, sign and give to the respective contractor, a Notice of Completion and Compliance.
 - b) If upon inspection, the completed Onsite Works have not been carried out in accordance with the Agreement, then the Customer must notify the relevant contractor before that contractor leaves the Site, of what is required to complete the relevant Onsite Works in accordance with the Agreement (**Additional Works**). Upon completion of the Additional Works, the process in clause 13.2a) will apply.
- 13.3 The Customer acknowledges that no allowance has been included in the Price for return visits to the Site by the Company or the Company's Employees or Contractor's required to complete the Onsite Works. The Customer acknowledges that if the Customer is not available to inspect the Onsite Works before the relevant contractor leaves the Site then the Customer forfeits and forever waives any right to have a defect in the Onsite Works rectified under the Agreement or otherwise.