

1. Definitions

- 1.1 “**CES**” means Consolidated Electrical Solutions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Consolidated Electrical Solutions Pty Ltd.
- 1.2 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CES to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 “**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.
- 1.5 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using CES’ 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.**
- 1.6 “**Damage Waiver Fee**” means the payment made by the Client at the time of hire in respect of damage which may be caused to the Equipment throughout the Hire Period as stated in the quotation.
- 1.7 “**Equipment**” means all Equipment including any accessories supplied on hire by CES to the Client (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by CES to the Client.
- 1.8 “**GST**” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 “**Intended Use**” means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.10 “**Minimum Hire Period**” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by CES to the Client.
- 1.11 “**Non-Conforming Building Product**” means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.12 “**Price**” means the Price payable (plus any GST where applicable) for the Works and/or Equipment hire as agreed between CES and the Client in accordance with clause 6 below.
- 1.13 “**Works**” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by CES to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.14 “**Worksite**” means the address nominated by the Client to which the Materials/Works are to be supplied by CES and/or where the Equipment is to be located.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works/Equipment.
- 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.
- 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.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with CES and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, CES reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by CES in relation to the Materials or Works supplied is given in good faith to the Client, or the Client’s agent and is based on CES’ own knowledge and experience and shall be accepted without liability on the part of CES. Where such advice or recommendations are not acted upon then CES shall require the Client or their agent to authorise commencement of the Works in writing. CES shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 Where the Client is a tenant (and therefore not the owner of the land and premises where Works are to be carried out) then the Client warrants that they have obtained the full consent of the owner for CES to carry out the Works on the owner’s land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify CES against any claim made by the owner of the premises (howsoever arising) in relation to the provision of the Works by CES, except where such claim has arisen because of the negligence of CES when undertaking the Works. Furthermore, the Client agrees that they shall, upon request from CES, provide evidence that:
- (a) they are the owner of the land and premises upon which the Works are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Works to be carried out on the land and premises.

- 2.8 In the event that the Client requests CES to:
- (a) make an emergency Call-Out for critical equipment after hours or causes CES to cancel or reschedule other work then CES reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any Materials used to undertake the Works unless otherwise agreed between CES and the Client; or
 - (b) provide the Works urgently, that may require CES' staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then CES reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between CES and the Client.
- 2.9 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, CES reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases CES will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold, as per clause 7.2 until such time as CES and the Client agree to such changes.
- 2.10 If CES has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.11 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 The Client acknowledges that CES shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to CES, that person shall have the full authority of the Client to order any Materials, Works and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to CES for all additional costs incurred by CES (including CES' profit margin) in providing any Materials, Works or variation/s requested thereto by the Client's duly authorised representative.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that CES shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by CES in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CES in respect of the Works.
- 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 wilful misconduct of CES; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3 In circumstances where the Client is required to place an order for Materials, 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 Materials (whether they are made to order Materials or not). ("**Client Error**"). The Client must pay for all Materials it orders from CES notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. CES is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Clients Errors.

5. Change in Control

- 5.1 The Client shall give CES 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 CES as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At CES' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by CES to the Client in respect of Works performed or Materials/Equipment supplied; or
 - (b) CES' quoted Price (subject to clause 6.2) which shall be binding upon CES provided that the Client shall accept CES' quotation in writing within thirty (30) days.
- 6.2 CES reserves the right to change the Price:
- (a) if a variation to the Works/Equipment which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to CES in the cost of labour or Materials which are beyond CES' control.
- 6.3 Variations will be charged for on the basis of CES' quotation, and will be detailed in writing, and shown as variations on CES' invoice. The Client shall be required to respond to any variation submitted by CES within ten (10) working days. Failure to do so will entitle CES to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At CES' sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by CES, which may be:
- (a) on delivery of the Materials/Equipment; or
 - (b) on completion of the Works; or

- (c) by way of progress payments in accordance with CES' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by CES.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and CES.
- 6.7 CES may in its discretion allocate any payment received from the Client towards any invoice that CES determines and may do so at the time of receipt or at any time afterwards. On any default by the Client CES may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CES, payment will be deemed to be allocated in such manner as preserves the maximum value of CES' Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 CES 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 CES in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as CES investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in CES placing the Client's account into default and subject to default interest in accordance with clause 18.1.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to CES an amount equal to any GST CES must pay for any supply of Works/Equipment by CES under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Subject to clause 7.2 it is CES' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that CES claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond CES' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify CES that the Worksite is ready.
- 7.3 Delivery Materials/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Materials/Equipment at CES' address; or
 - (b) CES (or CES' nominated carrier) delivers the Materials/Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.4 At CES' sole discretion, the cost of delivery is included in the Price.
- 7.5 CES may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by CES for delivery of the Works/Equipment is an estimate only and CES 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 Works/Equipment to be supplied at the time and place as was arranged between both parties. In the event that CES is unable to supply the Works/Equipment as agreed solely due to any action or inaction of the Client, then CES shall be entitled to charge a reasonable fee for re-supplying the Works/Equipment at a later time and date, and/or for storage of the Equipment/Materials.

8. Risk

- 8.1 If CES retains ownership of the Materials under clause 13 then:
- (a) where CES is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery;
 - (b) where CES is to both supply and install Materials then CES shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests CES to leave Materials outside CES' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 CES 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, CES accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) CES reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then CES shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until CES is satisfied that it is safe for the installation to proceed. CES may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.5 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify CES immediately upon any proposed changes. The Client agrees to indemnify CES against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.6 The Client acknowledges and accepts that:

- (a) where CES has performed temporary repairs that:
 - (i) CES offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) CES will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
 - (b) CES is only responsible for components that are replaced by CES and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
 - (c) CES shall not be responsible or liable for any defect in other appliances or power points as a coincidence of CES installing the Materials;
 - (d) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which CES' Materials are installed or connected to, or by workmanship not performed by CES, shall not be covered by any applicable warranty pertaining to the Materials;
 - (e) it is the Client's responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage;
 - (f) CES shall not be liable for any loss or damage caused in accessing the work area beyond reasonable control of CES (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services) which CES may have to break into or disturb in performance of the Works), unless due to the negligence of CES;
 - (g) under no circumstances, will CES handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
 - (i) CES shall suspend the Works;
 - (ii) the Client shall be fully responsible for the resolution of any resulting problems; and
 - (iii) any additional cost incurred by CES shall be added to the Price under clause 6.2.
 - (h) Materials supplied may exhibit variations in shade, colour, texture, surface and finish which may:
 - (i) fade or change colour over time;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- 8.7 CES will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

9. Worksite Access and Condition

- 9.1 CES is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by CES will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 9.2 It is the intention of CES and agreed by the Client that:
- (a) the Client shall ensure that CES has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). CES shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of CES; and
 - (b) it is the Client's responsibility to provide CES, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 9.3 Where CES requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply CES 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.
- 9.4 The Client agrees to be present at the Worksite when and as reasonably requested by CES and its employees, contractors and/or agents.
- 9.5 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of CES to undertake a Worksite 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 CES' standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where CES is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out CES' Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by CES.

10. Underground Locations

- 10.1 Prior to CES commencing any work the Client must advise CES of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical 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 Worksite.
- 10.2 Whilst CES will take all care to avoid damage to any underground services the Client agrees to indemnify CES 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 as per clause 10.1.

11. Compliance with Laws

- 11.1 The Client and CES shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any occupational health and safety laws (OHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 11.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Home Building Contracts Act 1991, in respect of all workmanship and building products to be supplied during the course of the Works;
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.

- 11.3 Where the Client has supplied products for CES to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in CES' opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then CES shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 11.4 The Client agrees that all materials supplied by the Client or the Client's third-party sub-contractors will:
- (a) be supplied in accordance with all legislative requirements;
 - (b) be suitable for their inclusion into the Works.
- 11.5 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 11.6 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- 11.7 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by CES, then CES shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Client's account.
- 11.8 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". CES' live Works procedures are designed to eliminate risk of injury to CES' employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.

12. Modern Slavery

- 12.1 For the purposes of this clause:
- (a) "**Act**" means the *Modern Slavery Act 2018 (cth)*
 - (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 12.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 12.3 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
 - (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;
 - (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;
 - (d) provide to CES a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of CES' request (or such longer period as CES agrees), provide to CES any information or assistance reasonable requested by CES;
 - (i) concerning the Client's compliance with the Act;
 - (ii) concerning the Client's operations and supply chains;
 - (iii) to enable CES to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable CES to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 12.4 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 CES will be able to terminate the Contract for any breach by the Client.
- 12.5 The Client warrants that any information supplied to CES is true and accurate and may be relied upon for the purposes of the Act.
- 12.6 The Client shall indemnify CES against any loss or liability suffered by CES as a result of the Client's breach of this clause 12.

13. Title to Materials

- 13.1 CES and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid CES all amounts owing to CES; and
 - (b) the Client has met all of its other obligations to CES.
- 13.2 Receipt by CES 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to CES on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for CES and must pay to CES the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by CES shall be sufficient evidence of CES' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with CES to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for CES and must pay or deliver the proceeds to CES on demand;
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of CES and must sell, dispose of or return the resulting product to CES as it so directs.;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises CES to enter any premises where CES believes the Materials are kept and recover possession of the Materials;
 - (g) CES may recover possession of any Materials in transit whether or not delivery has occurred;

- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of CES;
- (i) CES may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14. Personal Property Securities Act 2009 (“PPSA”)

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials/Equipment and/or collateral (account) – being a monetary obligation of the Client to CES for Works – that have previously been supplied and that will be supplied in the future by CES to the Client.
- 14.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CES may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, CES for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of CES;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials/Equipment and/or collateral (account) in favour of a third party without the prior written consent of CES;
 - (e) immediately advise CES of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.4 CES 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.
- 14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by CES, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client shall unconditionally ratify any actions taken by CES under clauses 14.2 to 14.5.
- 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.
- 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.

15. Security and Charge

- 15.1 In consideration of CES agreeing to supply the Works/Equipment, 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, 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).
- 15.2 The Client indemnifies CES from and against all CES’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CES’ rights under this clause.
- 15.3 The Client irrevocably appoints CES and each director of CES as the Client’s true and lawful attorney/s 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.

16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (“CCA”)

- 16.1 Subject to the conditions of warranty set out in clause 16.3 CES warrants that if any defect in any Workmanship provided by CES becomes apparent and is reported to CES within twelve (12) months of the date of delivery (time being of the essence) then CES will either (at CES sole discretion) replace or remedy the defect.
- 16.2 Further to clause 16.1 the Client must inspect all Materials/Equipment on delivery and must within three (3) days of delivery notify CES in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials /Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow CES to inspect the Materials/Equipment.
- 16.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.4 CES acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CES makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works/Equipment. CES’ liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.6 If the Client is a consumer within the meaning of the CCA, CES’ liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.7 If CES is required to replace any Materials under this clause or the CCA, but is unable to do so, CES may refund any money the Client has paid for the Materials.

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- 16.8 If CES is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then CES may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 16.9 If the Client is not a consumer within the meaning of the CCA, CES' liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by CES at CES' sole discretion;
 - (b) limited to any warranty to which CES is entitled, if CES did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 16.10 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.2; and
 - (b) CES has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 16.11 Notwithstanding clauses 16.2 to 16.10 but subject to the CCA, CES shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without CES' prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by CES;
 - (f) fair wear and tear, any accident, or act of God.
- 16.12 In the case of second hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by CES as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that CES has agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 16.12.
- 16.13 Notwithstanding anything contained in this clause if CES is required by a law to accept a return then CES will only accept a return on the conditions imposed by that law.
- 16.14 Subject to clause 16.2, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.

17. Intellectual Property

- 17.1 Where CES has designed, drawn, written plans or a schedule of Works, or created any Materials/Equipment for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in CES, and shall only be used by the Client at CES' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of CES.
- 17.2 The Client warrants that all designs, specifications or instructions given to CES will not cause CES to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CES against any action taken by a third party against CES in respect of any such infringement.
- 17.3 The Client agrees that CES may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials/Equipment which CES has created for the Client.

18. Default and Consequences of Default

- 18.1 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 CES' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If any account remains overdue after thirty (30) days, then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 18.3 If the Client owes CES any money, the Client shall indemnify CES from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, CES' 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.
- 18.4 Further to any other rights or remedies CES may have under this Contract, if a Client has made payment to CES, 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 CES under this clause 18 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.
- 18.5 Without prejudice to CES' other remedies at law CES shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CES shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CES becomes overdue, or in CES' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by CES;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies CES may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions CES may suspend or terminate the supply of Works/Equipment to the Client. CES will not be liable to the Client for any loss or damage the Client suffers because CES has exercised its rights under this clause.
- 19.2 CES may cancel any contract to which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment are due to be delivered) by giving written notice to the Client. On giving such notice CES shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to CES for Works already performed or Materials/Equipment already provided. CES shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels the delivery of Works/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by CES as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Materials/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by CES is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. CES acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). CES acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by CES that may result in serious harm to the Client, CES 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to CES in respect of Cookies where the Client utilises CES' website to make enquiries. CES agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to CES when CES sends an email to the Client, so CES may collect and review that information ("collectively Personal Information")
- If the Client consents to CES' use of Cookies on CES' website and later wishes to withdraw that consent, the Client may manage and control CES' privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees for CES 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 CES.
- 20.4 The Client agrees that CES may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.5 The Client consents to CES being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Client agrees that personal credit information provided may be used and retained by CES for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works/Equipment.
- 20.7 CES may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that CES is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided CES is a member of an approved OAIC 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 CES has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of CES, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

- 20.9 The Client shall have the right to request (by e-mail) from CES:
- (a) a copy of the Personal Information about the Client retained by CES and the right to request that CES correct any incorrect Personal Information; and
 - (b) that CES does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 CES 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.
- 20.11 The Client can make a privacy complaint by contacting CES via e-mail. CES 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.

21. Unpaid Seller's Rights

- 21.1 Where the Client has left any item with CES for repair, modification, exchange or for CES to perform any other service in relation to the item and CES has not received or been tendered the whole of any monies owing to it by the Client, CES shall have, until all monies owing to CES are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of CES shall continue despite the commencement of proceedings, or judgment for any monies owing to CES having been obtained against the Client.

22. Construction Contracts Act 2004

- 22.1 At CES' sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Construction Contracts Act 2004 may apply.
- 22.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

23. Service of Notices

- 23.1 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.
- 23.2 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.

24. Trusts

- 24.1 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 CES may have notice of the Trust, the Client covenants with CES 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 CES (CES 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.

25. General

- 25.1 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.
- 25.2 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.
- 25.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the Perth Courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 25.4 Subject to clause 16, CES 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 CES of these terms and conditions (alternatively CES' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works/Equipment on hire).
- 25.5 CES may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.6 The Client cannot licence or assign without the written approval of CES.

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- 25.7 CES may elect to subcontract out any part of the Works 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 CES' sub-contractors without the authority of CES.
- 25.8 The Client agrees that CES 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 CES to provide Works to the Client.
- 25.9 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.
- 25.10 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.
- 25.11 This Contract and any subsequent hire agreement between CES and the Client, shall constitute as the entire agreement between CES and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by CES that is not embodied in this Contract.
- 25.12 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

26. Hire Period

- 26.1 For Equipment in which a timing device is installed the Hire Period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 26.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from CES' premises and will continue until the return of the Equipment to CES' premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 26.3 If CES agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves CES' premises and continue until the Client notifies CES that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 26.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 26.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless CES confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies CES 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.

27. Risk to Equipment

- 27.1 CES retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 27.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies CES for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 27.3 The Client will insure, or self insure, CES' interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

28. Access and Inspection

- 28.1 CES and CES' representatives have the right to enter the location at any time upon giving prior reasonable notice to the Client to inspect, maintain, repair and/or repossess the Equipment.

29. Title to Equipment

- 29.1 The Equipment is and will at all times remain the absolute property of CES.
- 29.2 If the Client fails to return the Equipment to CES then CES or CES' agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 29.3 The Client is not authorised to pledge CES' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

30. Client's Responsibilities

- 30.1 The Client shall:
- satisfy itself at commencement that the Equipment is suitable for its purposes;
 - notify CES immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - carry out inspections and maintain the Equipment as is required by CES (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures) in the manner specified in the instruction sheet as supplied by CES;
 - operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by CES or posted on the Equipment;
 - ensure that:

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- (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to CES upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
 - (f) be liable for any parking or traffic infringement, taxes or duties, toll fees, impoundment, towage and storage costs incurred during the Hire Period and will supply relevant details as required by the Police and/or CES relating to any such matters or occurrences.
 - (g) comply with all work health and safety laws relating to the Equipment and its operation;
 - (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to CES;
 - (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
 - (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
 - (k) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
 - (l) indemnify and hold harmless CES in respect of all claims arising out of the Client's use of the Equipment.
- 30.2 The Client shall not:
- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (b) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (c) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (d) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 30.3 Immediately on request by CES the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to CES;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment ;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in CES' reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
 - (d) the cost of fuels and consumables provided by CES and used by the Client;
 - (e) any:
 - (i) lost hire fees CES would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - (ii) costs incurred by CES in picking up and returning the Equipment to CES' premises if the Client does not return the Equipment to CES' premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (iii) Damage Waiver Fee or insurance excess payable in relation to a claim made by either the Client or CES in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or CES'.
31. **Damage Waiver**
- 31.1 The **damage waiver is NOT insurance** but is an agreement by CES to limit the Client's liability in certain circumstance **only** for loss, theft, or damage, to CES' Equipment for an amount called the **Damage Waiver Fee. The Client is not entering into a contract of insurance with CES by paying for the Damage Waiver Fee.** The Damage Waiver Fee is explained below.
- 31.2 Where the Client has elected to pay the Damage Waiver Fee, then this clause shall not entitle the Client to, or implies the availability of compensation from CES for any liability incurred by the Client in relation to the use of the Equipment and shall cease upon expiry of the Hire Period.
- 31.3 The Damage Waiver Fee per claim for each item of Equipment is the amount equal to the amount needed to cover the **recovery and repair costs** of the Equipment or a minimum of five thousand dollars (\$5,000) plus GST for any one item as scheduled in the Contract (including but not limited to, all transport and hire costs of subsequent Equipment to and from a Worksite, used in the recovery of any damaged, lost or stolen Equipment), whichever is the lesser amount, or as otherwise agreed between both parties.
- 31.4 In the event that the Client elects to pay the Damage Waiver Fee CES shall, during the Hire Period, be responsible for the cost of the repairs to the Equipment, subject to the conditions as set out in clause 30 and 31.5. If the Equipment is deemed to be unrepairable, then CES shall within forty-eight (48) hours replace the Equipment or an equivalent thereto unless otherwise agreed in writing.
- 31.5 Even if the Client has paid the Damage Waiver Fee, CES shall not waive CES' rights to claim against the Client for loss, theft or damage to the Equipment and the Damage Waiver Fee shall not apply if the loss, theft or damage or
- (a) has arisen as a result of the Customer breaching a clause of this Contract;
 - (b) arises out of a breach of any statutory laws or regulations in connection with the use of the Equipment;
 - (c) has arisen as a result of misuse, abuse, wilful or malicious acts, negligent use or overloading of the Equipment;
 - (d) arises out of failure to adequately maintain fuel or oil and coolant levels, lubrication, or other maintenance to be undertaken by the Client;
 - (e) has arisen as a result of the Client's failure to follow instructions given to the Client by CES in respect of the proper user of the Equipment;
 - (f) has arisen as a result of the Client's failure to follow the manufacturer's operating instructions if supplied with the Equipment;
 - (g) damage to the Equipment whilst it is loaded, unloaded from boats, transport of the Equipment on maritime vessels or the use of the Equipment on any wharf or bridge or over any body of water;
 - (h) damage to the Equipment whilst in transport, publicly or privately by any form of crane, truck or lifting device etc; or
 - (i) is caused by the wilful actions of the Customer, their employees, sub-contractors or agents.

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31.6 The Client accepts full responsibility for and shall keep CES indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the Hire Period and whether or not arising from any negligence, failure or omission of the Client or any other persons.