

SME Earthmoving Pty Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "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.
- 1.2 "SME" means SME Earthmoving Pty Limited ATF Sam Richardson Business Trust T/A SME Earthmoving Pty Limited its successors and assigns or any person acting on behalf of and with the authority of SME Earthmoving Pty Limited ATF Sam Richardson Business Trust T/A SME Earthmoving Pty Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting SME to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a 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.
- 1.4 "Incidental Items" means any goods, documents, designs, drawings, tools or materials supplied, consumed, created or deposited incidentally by SME in the course of it conducting, or supplying to the Client, any Services.
- 1.5 "Equipment" means all Equipment including any accessories supplied on hire by SME to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by SME to the Client.
- 1.6 "Services" means all Services supplied by SME to the Client at the Client's request from time to time.
- 1.7 "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.
- 1.8 "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 ordering from the 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 ordering Services via the website.**
- 1.9 "Price" means the price payable (plus any GST where applicable) for the Services and/or Equipment hire as agreed between SME and the Client in accordance with clause 6 of this Contract.
- 1.10 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

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 Services/Equipment provided by SME.
- 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 Services/Equipment on credit shall not take effect until the Client has completed a credit application with SME and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services/Equipment request exceeds the Client's credit limit and/or the account exceeds the payment terms, SME reserves the right to refuse delivery.
- 2.6 Where SME gives any advice, recommendation, information, assistance or service provided by SME in relation to the Services supplied is given in good faith to the Client, or the Client's agent and is based on SME's own knowledge and experience and shall be accepted without liability on the part of SME. Where such advice or recommendations are not acted upon then SME shall require the Client or their agent to authorise commencement of the Services in writing. SME shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representative

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

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that SME 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 SME 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 SME in respect of the Services.
- 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 SME; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give SME 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,

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change of trustees, or business practice). The Client shall be liable for any loss incurred by SME as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At SME's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by SME to the Client; or
 - (b) the Price as at the date of delivery of the Services/Equipment according to SME's current price list; or
 - (c) SME's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 SME reserves the right to change the Price:
- (a) if a variation to the Services/Equipment which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations including the discovery of asbestos or synthetic mineral fibres, quantity limits, prerequisite work by any third party not being completed, hard rock barriers below the surface, design changes or finding unsuitable or contaminated material and/or water etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to SME in the cost of labour or materials which are beyond SME's control.
- 6.3 Variations will be charged for on the basis of SME's quotation, and will be detailed in writing, and shown as variations on SME's invoice. The Client shall be required to respond to any variation submitted by SME within ten (10) working days. Failure to do so will entitle SME 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 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by SME, which may be:
- (a) on delivery of the Services/Equipment;
 - (b) before delivery of the Services/Equipment;
 - (c) by way of instalments/progress payments in accordance with SME's payment schedule;
 - (d) thirty (30) days following the end of the month in which an invoice or statement is emailed or posted to the Client's email address or address for notices;
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SME.
- 6.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and SME.
- 6.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, SME reserves the right to treat all retentions as placing the Client's account into default.
- 6.7 SME may in its discretion allocate any payment received from the Client towards any invoice that SME determines and may do so at the time of receipt or at any time afterwards. On any default by the Client SME may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SME, payment will be deemed to be allocated in such manner as preserves the maximum value of SME's Purchase Money Security Interest (as defined in the PPSA) in the Services/Equipment.
- 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 SME nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to SME an amount equal to any GST SME must pay for any supply by SME under this or any other agreement for providing SME's Services/Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.10 SME and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid SME all amounts owing for the Services/Equipment; and
 - (b) the Client has met all other obligations due by the Client to SME in respect of all contracts between SME and the Client.
- 6.11 Receipt by SME of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then SME's ownership or rights in respect of the Incidental Items shall continue.

7. Provision of the Services

- 7.1 Subject to clause 7.2 it is SME's responsibility to ensure that the Services start as soon as it is reasonably possible or as requested by the Client.
- 7.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that SME claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond SME's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify SME that the site is ready.
- 7.3 At SME's sole discretion delivery of the Equipment shall take place when:
- (a) the Equipment are supplied to the Client at SME's address; or
 - (b) the Equipment are supplied to the Client at the Client's nominated address.
- 7.4 At SME's sole discretion, the cost of Delivery and/or collection is either included in the Price or is in addition to the Price.
- 7.5 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.6 Any time specified by SME for delivery of the Services/Equipment is an estimate only and SME will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services/Equipment to be supplied at the time and place as was arranged between both parties. In the event that SME is unable to supply

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the Services/Equipment as agreed solely due to any action or inaction of the Client then SME shall be entitled to charge a reasonable fee for re-supplying the Services/Equipment at a later time and date.

8. Risk

- 8.1 SME 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, SME accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 The Client acknowledges and accepts that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where SME is requested to merely clear such blockages, SME can offer no guarantee against damage incurred whilst clearing such blockages, reoccurrence or further damage. In the event of collapse during the pipe clearing process, SME will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 8.3 In the event that during the course of the Services SME discovers any:
- (a) undisclosed waste and/or hazardous materials then SME reserves the right to halt all Services and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that SME agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 6.2 and shall be in addition to the Price. SME's under no circumstances shall undertake the removal of asbestos; and
 - (b) fossils, artefacts or any other remains of geological or archaeological interest then SME's reserves the right to halt all Services and immediately notify the Client. The Client accepts and agrees that all additional costs that may be incurred by SME's as a result of any such delays shall be borne by the Client and shall be treated as a variation in accordance with clause 6.2.

9. Client's Responsibilities

- 9.1 The Client shall ensure that SME has clear and free access to the site at all times to enable them to undertake the Services. SME shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, plants, driveways and concreted or paved or grassed areas, or gardens or landscaping, etc.) unless due to SME's negligence.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by SME.
- 9.3 It shall be the Client's responsibility (where applicable) to ensure that, prior to commencement of the Services:
- (a) all gas and electricity are cancelled and disconnected (from the main supply at the street); and
 - (b) a safety fence is erected around the perimeter of the site to ensure public safety; and
 - (c) the Client must advise SME of the precise location of all underground services on site and clearly mark the same:
 - (i) 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 site; and
 - (ii) whilst SME will take all care to avoid damage to any underground services the Client agrees to indemnify SME 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 this clause 9.3(c)(i); and
 - (d) the Client will supply access to toilet, waste disposal amenities, eating and first aid facilities, if required; and
 - (e) that the Client will provide a spotter at all times.
- 9.4 It shall be the Client's responsibility to make the site available on the agreed dates and times. If the Services are delayed or interrupted by the failure of the Client to adhere to the installation schedule agreed to between SME and the Client, any additional costs will be invoiced to the Client as per clause 6.2.
- 9.5 If SME notifies the Client that it intends to store onsite materials, plant, equipment or tools to be used in performance of the Services, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 6.2.

10. Insurance

- 10.1 SME shall have public liability insurance of at least \$20m. It is the Client's responsibility to ensure that they are similarly insured.

11. Compliance with Laws

- 11.1 The client and SME shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 The client shall obtain (at the expense of the client) all licenses and approvals that may be required for the Services

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Incidental Items/Equipment previously supplied by SME to the Client;
 - (b) all Incidental Items/Equipment will be supplied in the future by SME to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to SME for Services – that have previously been provided and that will be provided in the future by SME to the Client.
- 12.3 The Client undertakes to:

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- (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 SME 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, SME 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 Incidental Items/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SME;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items/Equipment in favour of a third party without the prior written consent of SME;
 - (e) immediately advise SME of any material change in its business practices of selling Incidental Items which would result in a change in the nature of proceeds derived from such sales.
- 12.4 SME 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by SME, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by SME under clauses 12.2 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 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 12 will apply generally for the purposes of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of SME agreeing to supply Services/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, 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).
- 13.2 The Client indemnifies SME from and against all SME's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SME's rights under this clause.
- 13.3 The Client irrevocably appoints SME and each director of SME as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 14.1 The Client must inspect SME's Services on completion, and the Equipment on delivery and must within seven (7) days notify SME in writing of any evident defect in the Services/Equipment (including SME's workmanship), or any Incidental Items provided, or of any other failure by SME to comply with the description of, or quote for, the Services/Equipment which SME was to supply. The Client must notify any other alleged defect in SME's Services, Equipment or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SME to review the Services, Equipment or Incidental Items that were provided.
- 14.2 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**).
- 14.3 SME acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SME makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services/Equipment. SME's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, SME's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If SME is required to rectify, re-supply, or pay the cost of re-supplying the Services/Equipment under this clause or the CCA, but is unable to do so, then SME may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment and Incidental Items which have been provided to the Client which were not defective.
- 14.7 If the Client is not a consumer within the meaning of the CCA, SME's liability for any defective Services/Equipment or Incidental Items is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by SME at SME's sole discretion;
 - (b) otherwise negated absolutely.
- 14.8 Notwithstanding clauses 14.1 to 14.7 but subject to the CCA, SME 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 Incidental Items;
 - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services/Equipment by the Client or any third party without SME's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by SME;
 - (f) fair wear and tear, any accident, or act of God;
 - (g) the Client's failure to provide a spotter at all times.

15. Intellectual Property

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

16. Default and Consequences of Default

- 16.1 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 SME's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes SME any money the Client shall indemnify SME from and against all costs and disbursements incurred by SME in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SME's contract default fees, and bank dishonour fees).
- 16.3 Further to any other rights or remedies SME may have under this Contract, if a Client has made payment to SME, 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 SME under this clause 16 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.
- 16.4 Without prejudice to SME's other remedies at law SME shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SME shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SME becomes overdue, or in SME's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by SME;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

- 17.1 Without prejudice to any other remedies SME may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SME may suspend or terminate the supply of Services/Equipment to the Client. SME will not be liable to the Client for any loss or damage the Client suffers because SME has exercised its rights under this clause.
- 17.2 SME may cancel any contract to which these terms and conditions apply or cancel delivery of Services/Equipment at any time before the Services are commenced or Equipment provided by giving written notice to the Client. On giving such notice SME shall repay to the Client any money paid by the Client for the provision of the Services/Equipment. SME shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels delivery of the Services/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by SME as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by SME is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. SME 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"). SME acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by SME that may result in serious harm to the Client, SME 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.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to SME in respect of Cookies where transactions for purchases/orders transpire directly from SME's website. SME 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 SME when SME sends an email to the Client, so SME may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via SME's website.
- 18.3 The Client agrees for SME 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 SME.
- 18.4 The Client agrees that SME may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 18.5 The Client consents to SME being given a consumer credit report to collect overdue payment on commercial credit.

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- 18.6 The Client agrees that personal credit information provided may be used and retained by SME for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services/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 Services/Equipment.
- 18.7 SME may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that SME is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and SME has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of SME, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Client shall have the right to request (by e-mail) from SME:
- (a) a copy of the Personal Information about the Client retained by SME and the right to request that SME correct any incorrect Personal Information; and
 - (b) that SME does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.10 SME 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.
- 18.11 The Client can make a privacy complaint by contacting SME via e-mail. SME 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.

19. Building and Construction Industry Security of Payment Act 2002

- 19.1 At SME's sole discretion, if there are any disputes or claims for unpaid Incidental Items and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 19.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

20. Equipment Hire

- 20.1 Equipment shall at all times remain the property of SME and is returnable on demand by SME. In the event that Equipment is not returned to SME in the condition in which it was delivered SME retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all SME shall have right to charge the Client the full cost of replacing the Equipment.
- 20.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
 - (b) not 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;
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by SME to the Client.
- 20.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, SME's interest in the Equipment and agrees to indemnify SME 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 effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use 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.

21. Wet Hire

- 21.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of SME.
- 21.2 In the event of Wet Hire, the operator of the Equipment remains an employee of SME and operates the Equipment in accordance with the Client's instructions. As such SME shall not be liable for any actions of the operator in following the Client's instructions.

22. Service of Notices

- 22.1 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;

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- (e) if sent by email to the other party's last known email address.
- 22.2 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.
- 23. Trusts**
- 23.1 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 SME may have notice of the Trust, the Client covenants with SME 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 SME (SME 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.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which SME has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in Victoria.
- 24.3 Subject to clause 14, SME 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 SME of these terms and conditions (alternatively SME's liability shall be limited to damages which under no circumstances shall exceed the Price paid for the Services/Equipment).
- 24.4 SME may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of SME.
- 24.6 SME may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of SME's sub-contractors without the authority of SME.
- 24.7 The Client agrees that SME 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 SME to provide Services/Equipment to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 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.