Redshaw Constructions Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Redshaw" means Redshaw Constructions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Redshaw Constructions Pty Ltd.

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting Redshaw 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 part of a Trust, shall be bound in their capacity as a trustee; and

(c) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Redshaw 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).

1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between Redshaw and the Client in accordance with clause 5 below.

1.5 "GST" means Goods and Services Tax (GST) 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 delivery of any Works.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and Redshaw.

2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.4 If Redshaw 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.

2.5 The Client acknowledges and agrees that where Redshaw has performed temporary repairs that:

(a) Redshaw offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and

(b) Redshaw will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that Redshaw 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 Redshaw 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 Redshaw in respect of the Works.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Redshaw; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Client shall give Redshaw 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 Redshaw as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At Redshaw's sole discretion the Price shall be either:

(a) as indicated on invoices provided by Redshaw to the Client in respect of Works performed or Materials supplied; or

(b) the Price as at the date of delivery of the Works according to Redshaw's current price list; or

(c) Redshaw's quoted Price (subject to clause 5.2) which shall be binding upon Redshaw provided that the Client shall accept Redshaw's quotation in writing within thirty (30) days.

5.2 Redshaw reserves the right to change the Price:

(a) if a variation to the Materials 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 conditions, limited access to the site, obscured building defects which require remedial work, health hazards/safety considerations (such as the discovery of asbestos, rot, termites or other toxic/hazardous materials), prerequisite work by any third party not being completed, hard rock barriers below the surface, or hidden pipes and/or wiring, etc.) which are only discovered on commencement of the Works; or

(d) in the event of increases to Redshaw in the cost of labour or materials which are beyond Redshaw's control.

5.3 Variations will be charged for on the basis of Redshaw's quotation, and will be detailed in writing, and shown as variations on Redshaw's invoice. The Client shall be required to respond to any variation submitted by Redshaw within ten (10) working days. Failure to do so will entitle Redshaw 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.

5.4 At Redshaw's sole discretion a non-refundable deposit may be required.

5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Redshaw, which may be:

(a) the date specified on any invoice or other form as being the date for payment; or

(b) failing any notice to the contrary, the date which is:

(i) thirty (30) days following the end of the month in which a statement is delivered to the Client by Redshaw, for all credit account holders; or

(ii) seven (7) days following the date of any invoice given to the Client by Redshaw.

5.6 Payment may be made by cash, 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 Redshaw.

5.7 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 Redshaw nor to withhold payment of any invoice because part of that invoice is in dispute.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Redshaw an amount equal to any GST Redshaw must pay for any supply by Redshaw under this or any other contract for the sale of the Materials. 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. Provision of the Works

6.1 Subject to clause 6.2 it is Redshaw's responsibility to ensure that the Works start as soon as it is reasonably possible.

6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Redshaw claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Redshaw'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 Works; or

(c) notify Redshaw that the site is ready.

6.3 At Redshaw's sole discretion, the cost of delivery is included in the Price.

6.4 The Client shall ensure that Redshaw has clear and free access to the worksite at all times to enable them to undertake the Works. Redshaw shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Redshaw.

6.5 Any time specified by Redshaw for delivery of the Works is an estimate only and Redshaw 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 to be supplied at the time and place as was arranged between both parties. In the event that Redshaw is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Redshaw shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7. Risk

7.1 If Redshaw retains ownership of the Materials under clause 10 then:

(a) where Redshaw 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. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;

(i) the Client or the Client's nominated carrier takes possession of the Materials at Redshaw's address; or

(ii) the Materials are delivered by Redshaw or Redshaw's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(b) where Redshaw is to both supply and install Materials then Redshaw 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.

7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Redshaw to leave Materials outside Redshaw's 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.

7.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, rot, termites or other toxic/hazardous materials, defective or unsafe plumbing or latent or unfavourable soil conditions such as liquefaction residue, or risk) that Redshaw, or Redshaw employees, reasonably form the opinion that the Client's premises is not safe for the Works to proceed then Redshaw shall be entitled to delay the provision of the Works (in accordance with clause 6.2) until Redshaw is satisfied that it is safe for the installation to proceed. Redshaw may at its sole discretion agree to bring the premises 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 (as per clause 5.2) and will be charged for in addition to the Price.

7.4 In the event asbestos or any other toxic substances are discovered at the site, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Redshaw against any costs incurred by Redshaw as a consequence of such discovery. Under no circumstances will Redshaw handle removal of asbestos product.

7.5 Redshaw 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, Redshaw accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

7.6 Where Redshaw requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply Redshaw 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.

7.7 Redshaw shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against Redshaw's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to Redshaw. Accordingly, Redshaw offers no warranty in regards to the aforementioned.

7.8 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Redshaw is requested to merely clear such blockages, Redshaw can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Redshaw 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.

7.9 In the event that the Client requests Redshaw to use drain/pipe unblocking equipment, and Redshaw does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, Redshaw may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.

7.10 The Client acknowledges that:

(a) Redshaw is only responsible for parts that are repaired by Redshaw 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/or found to be the source of the failure;

(b) where the Client has supplied materials for Redshaw to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials; and

(c) Redshaw shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b) applies.

7.11 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this contract. Redshaw shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.

7.12 Redshaw accepts no responsibility for:

(a) any damage or defects in any Materials caused by movement and/or interference of the said Materials;

(b) painting, re-decorating, re-sealing, carpentry, face brickwork, rendered masonry surfaces, or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.

7.13 The Client acknowledges that they shall:

(a) remove any furniture or personal items from the vicinity of the Works, and agrees that Redshaw shall not be liable for any damage caused to those items through the Clients failure to comply with this clause;

(b) be wholly responsible for animals and/or children on the worksite;

(c) be wholly responsible for the removal of rubbish (including but not limited to contaminated soil stockpiling of excess spoil) from or clean-up of the worksite;

(d) supply electricity, temporary lighting, water, eating and first aid facilities if so required.

8. Underground Locations

8.1 Unless otherwise agreed in writing between the Client and Redshaw it shall be the Client's responsibility to advise the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, 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 site.

8.2 If the Client requests Redshaw to engage a service locator then this shall be in addition to the Price and "Dial Before You Dig" must be consulted and any potential underground services marked on site.

8.3 Whilst Redshaw will take all care to avoid damage to any underground services the Client agrees to indemnify Redshaw in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified and notified as per clause 8.1.

9. Compliance with Laws

9.1 The Client and Redshaw 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 work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

9.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

9.3 The Client warrants that any existing plumbing, and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. Redshaw reserves the right to halt all Works (in accordance with clause 6.2) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed Redshaw will charge a standard fee for the time spent on worksite based on Redshaw's quotation.

10. Title

10.1 Redshaw and the Client agree that ownership of the Materials shall not pass until:

(a) the Client has paid Redshaw all amounts owing to Redshaw; and

(b) the Client has met all of its other obligations to Redshaw.

10.2 Receipt by Redshaw 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.

10.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 10.1:

(a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Redshaw on request.

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for Redshaw and must pay to Redshaw 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 Redshaw shall be sufficient evidence of Redshaw's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Redshaw 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 Redshaw and must pay or deliver the proceeds to Redshaw 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 Redshaw and must sell, dispose of or return the resulting product to Redshaw as it so directs.

(f) unless the Materials have become fixtures the Client irrevocably authorises Redshaw to enter any premises where Redshaw believes the Materials are kept and recover possession of the Materials.

(g) Redshaw 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 Redshaw.

(i) Redshaw may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

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

11.2 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 and/or collateral (account) – being a monetary obligation of the Client to Redshaw for Works – that have previously been supplied and that will be supplied in the future by Redshaw to the Client.

11.3 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 Redshaw 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 11.3(a)(i) or 11.3(a)(ii);

(b) indemnify, and upon demand reimburse, Redshaw 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 charged thereby;

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

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Redshaw;

(e) immediately advise Redshaw 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.

11.4 Redshaw 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.

11.5 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.

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

11.7 Unless otherwise agreed to in writing by Redshaw, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

11.8 The Client shall unconditionally ratify any actions taken by Redshaw under clauses 11.3 to 11.5.

11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

12.1 In consideration of Redshaw agreeing to supply the Materials, 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).

12.2 The Client indemnifies Redshaw from and against all Redshaw's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Redshaw's rights under this clause.

12.3 The Client irrevocably appoints Redshaw and each director of Redshaw as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

13.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within forty-eight (48) hours of delivery notify Redshaw 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/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Redshaw to inspect the Materials or to review the Works provided.

13.2 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**).

13.3 Redshaw acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Redshaw makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Redshaw's liability in respect of these warranties is limited to the fullest extent permitted by law.

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

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

13.7 If Redshaw 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 Redshaw 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.

13.8 If the Client is not a consumer within the meaning of the CCA, Redshaw's 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 Redshaw at Redshaw's sole discretion;

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

(c) otherwise negated absolutely.

13.9 Subject to this clause 13, returns will only be accepted provided that:

(a) the Client has complied with the provisions of clause 13.1; and

(b) Redshaw 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.

13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, Redshaw 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 Redshaw's prior approval;

(e) the Client failing to follow any instructions or guidelines provided by Redshaw;

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

13.11 Redshaw may in its absolute discretion accept non-defective Materials for return in which case Redshaw may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Materials plus any freight costs.

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

14. Intellectual Property

14.1 Where Redshaw has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Redshaw, and shall only be used by the Client at Redshaw's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Redshaw.

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

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

15. Default and Consequences of Default

15.1 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 Redshaw's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

15.3 Further to any other rights or remedies Redshaw may have under this contract, if a Client has made payment to Redshaw, 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 Redshaw under this clause 15 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.

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

(a) any money payable to Redshaw becomes overdue, or in Redshaw'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 Redshaw;

(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.

16. Cancellation

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

16.2 Redshaw may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Redshaw shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Redshaw for Works already performed. Redshaw shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Redshaw as a direct result of the cancellation (including, but not limited to, any loss of profits).

16.4 Cancellation of orders for products 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.

17. Privacy Act 1988

17.1 The Client agrees for Redshaw to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Redshaw.

17.2 The Client agrees that Redshaw 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.

17.3 The Client consents to Redshaw being given a consumer credit report to collect overdue payment on commercial credit.

17.4 The Client agrees that personal credit information provided may be used and retained by Redshaw for the following purposes (and for other agreed purposes or required by):

(a) the provision of Works; and/or

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

17.5 Redshaw 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.

17.6 The information given to the CRB may include:

(a) personal information as outlined in 17.1 above;

(b) name of the credit provider and that Redshaw 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 Redshaw has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);

(g) information that, in the opinion of Redshaw, 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).

17.7 The Client shall have the right to request (by e-mail) from Redshaw:

(a) a copy of the information about the Client retained by Redshaw and the right to request that Redshaw correct any incorrect information; and

(b) that Redshaw does not disclose any personal information about the Client for the purpose of direct marketing.

17.8 Redshaw 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.

17.9 The Client can make a privacy complaint by contacting Redshaw via e-mail. Redshaw 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.

18. Building and Construction Industry Payments Act 2004

18.1 At Redshaw's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

18.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

19. Unpaid Seller's Rights

19.1 Where the Client has left any item with Redshaw for repair, modification, exchange or for Redshaw to perform any other service in relation to the item and Redshaw has not received or been tendered the whole of any monies owing to it by the Client, Redshaw shall have, until all monies owing to Redshaw are paid:

(a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

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

20. Trusts

20.1 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 Redshaw may have notice of the Trust, the Client covenants with Redshaw 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 Redshaw (Redshaw 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.

21. General

21.1 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.

21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which Redshaw has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts of Queensland.

21.3 Subject to clause 13 Redshaw 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 Redshaw of these terms and conditions (alternatively Redshaw's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

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

21.5 The Client cannot licence or assign without the written approval of Redshaw.

21.6 Redshaw 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 Redshaw's sub-contractors without the authority of Redshaw.

21.7 The Client agrees that Redshaw may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Redshaw to provide Works to the Client.

21.8 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.

21.9 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.

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Redshaw Constructions Pty Ltd - Terms & Conditions of Hire

1. Definitions

1.1 "Redshaw" means Redshaw Constructions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Redshaw Constructions Pty Ltd.

1.2 "Client" means the Client or any person acting on behalf of and with the authority of the Client, as specified in any invoice, document or order, and if there is more than one Client is a reference to each hirer jointly and severally.

1.3 "Equipment" means all Equipment (being plant, machinery and including any accessories, attachments, tools, and supporting documents) supplied on hire by Redshaw to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Redshaw to the Client.

1.4 "Vehicle" shall mean any Vehicle (including any accessories) supplied by Redshaw to the Client. The Vehicle shall be described in this agreement or on any other forms as provided by Redshaw to the Client, and includes any parts, components, accessories and contents supplied by Redshaw.

1.5 "Damage" means damage to or loss or destruction of the Equipment of whatsoever nature and howsoever caused including, but not limited to, situations where component parts fail prematurely for whatever reason.

1.6 "Major Repairs" means repairs to the engine, torque converter, transmission, final drives or differential.

1.7 "GET" shall mean ground engaging tools.

1.8 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Redshaw to the Client.

1.9 "Price" means the cost of the hire of the Equipment as agreed between Redshaw and the Client subject to clause 4 of this contract.

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, the Equipment.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Redshaw.

2.3 Equipment is supplied by Redshaw only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14) of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

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

4. Price and Payment

4.1 At Redshaw's sole discretion the Price shall be either;

(a) as indicated on invoices provided by Redshaw to the Client in respect of Equipment supplied on hire; or

(b) Redshaw's current Price, at the date of delivery of the Equipment, according to Redshaw's current price list; or

(c) Redshaw's quoted Price (subject to clause 4.2) which shall be binding upon Redshaw provided that the Client shall accept in writing Redshaw's quotation within thirty (30) days.

4.2 Redshaw reserves the right to change the Price in the event of a variation to Redshaw's quotation. Variations will be charged for on the basis of Redshaw's quotation, and will be detailed in writing, and shown as variations on Redshaw's invoice. The Client shall be required to respond to any variation submitted by Redshaw within ten (10) working days. Failure to do so will entitle Redshaw 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.

4.3 At Redshaw's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 14.2, and any outstanding balance thereof shall be due as per clause 4.4.

4.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Redshaw, which may be:

(a) on delivery of the Equipment; or

(b) before delivery of the Equipment; or

(c) due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;

(d) the date specified on any invoice or other form as being the date for payment; or

(e) failing any notice to the contrary, the date which is either seven (7), fourteen (14) or thirty (30) days following the date of any invoice given to the Client by Redshaw.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and Redshaw.

4.6 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 Redshaw nor to withhold payment of any invoice because part of that invoice is in dispute.

4.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Redshaw an amount equal to any GST Redshaw must pay for any supply by Redshaw under this or any other agreement for the hire of the 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.

4.8 Receipt by Redshaw 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.

5. Hire Period

5.1 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.

5.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment departs from Redshaw's premises and will continue until the return of the Equipment to Redshaw's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

5.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

5.4 Subject to clause 6, no allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Redshaw confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Redshaw 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.

5.5 Off-hire receipts will only be issued when the Equipment has been either collected by Redshaw, or returned to Redshaw's premises.

6. Stand Down

6.1 In the event an item of Equipment is stood down for servicing or repairs other than Major Repairs, the Client shall continue to be liable for the agreed hire charge during the period the Equipment is stood down.

6.2 Where an item of Equipment is stood down for Major Repairs for which Redshaw accepts responsibility, the hire charges shall be suspended until the repairs are affected and the Equipment is available for use by the Client.

6.3 Redshaw shall reserve the right to determine whether or not the Client shall continue to be liable for hire charges in the event an item of Equipment is not in use.

7. Delivery

7.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that:

(a) the Client or the Client's nominated carrier takes possession of the Equipment at Redshaw's office; or

(b) Redshaw (or Redshaw's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.

7.2 At Redshaw's sole discretion the cost of delivery is in addition to the Price.

7.3 Any time specified by Redshaw for delivery of the Equipment is an estimate only and Redshaw 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 Equipment to be supplied at the time and place as was arranged between both parties. In the event that Redshaw is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then Redshaw shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

8. Risk

8.1 Redshaw retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.

8.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Redshaw 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.

8.3 The Client will insure, or self-insure, Redshaw's 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.

8.4 The Client accepts full responsibility for and shall keep Redshaw 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.

9. Underground Locations

9.1 Where applicable and in the case of wet hire, Prior to Redshaw's employee commencing any work the Client must advise Redsahw of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, 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 site.

9.2 Whilst Reshaw will take all care to avoid damage to any underground services the Client agrees to indemnify Redshaw 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 9.1.

10. Title

10.1 The Equipment is and will at all times remain the absolute property of Redshaw, and the Client must return the Equipment to Redshaw upon request to do so.

10.2 If the Client fails to return the Equipment to Redshaw as is required under this agreement or when requested to do so, then Redshaw or Redshaw's agent may (as the invitee of the Client) enter upon and into any 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. Any costs incurred by Redshaw as a result of Redshaw so repossessing the Equipment shall be charged to the Client.

10.3 The Client is not authorised to pledge Redshaw's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

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

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

11.2 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 Equipment that has previously been supplied and that will be supplied in the future by Redshaw to the Client.

11.3 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 Redshaw 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 11.3(a)(i) or 11.3(a)(ii);

(b) indemnify, and upon demand reimburse, Redshaw 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 Equipment charged thereby;

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

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

11.4 Redshaw 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.

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

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

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

11.8 The Client must unconditionally ratify any actions taken by Redshaw under clauses 11.3 to 11.5.

11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

12. Security and Charge

12.1 In consideration of Redshaw agreeing to supply 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).

12.2 The Client indemnifies Redshaw from and against all Redshaw's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Redshaw's rights under this clause.

12.3 The Client irrevocably appoints Redshaw and each director of Redshaw as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

13.1 The Client must inspect the Equipment on delivery and must within forty-eight (48) hours of delivery notify Redshaw 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 Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Redshaw to inspect the Equipment.

13.2 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).

13.3 Redshaw acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Redshaw makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. Redshaw's liability in respect of these warranties is limited to the fullest extent permitted by law.

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

13.6 If Redshaw is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then Redshaw may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Client which were not defective.

13.7 If the Client is not a consumer within the meaning of the CCA, Redshaw's liability for any defect or damage in the services or Equipment is:

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

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

(c) otherwise negated absolutely.

13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, Redshaw 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 Equipment;

(b) the Client interfering with the Equipment in any way without Redshaw's written approval to do so;

(c) the Client using the Equipment for any purpose other than that for which it was designed;

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

(e) the Client failing to follow any instructions or guidelines provided by Redshaw;

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

14. Client's Responsibilities

14.1 The Client shall:

(a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;

(b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to Redshaw upon request;

(c) maintain the Equipment as is required by Redshaw (including, but not limited to, maintaining (where applicable) water, oil and fluid levels, tyre pressures and GET consumables);

(d) ensure that 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;

(e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Redshaw relating to any such matters or occurrences;

(f) not carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of Redshaw;

(g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));

(h) 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;

(i) notify Redshaw 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;

(j) satisfy itself at commencement that the Equipment is suitable for its purposes;

(k) 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 Redshaw or posted on the Equipment;

(l) comply with all work health and safety laws relating to the Equipment and its operation;

(m) 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 Redshaw (or Redshaw's designated employee);

(n) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;

(o) 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;

(p) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work.

14.2 Immediately on request by Redshaw the Client will pay:

(a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Redshaw;

(b) all costs incurred in cleaning the Equipment;

(c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;

(d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;

(e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Redshaw's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;

(f) the cost of fuels and consumables provided by Redshaw and used by the Client;

(g) any costs incurred by Redshaw in picking up and returning the Equipment to Redshaws premises if the Client does not return the Equipment to Redshaws premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.

(h) any lost hire fees Redshaw would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;

(i) any insurance excess payable in relation to a claim made by either the Client or Redshaw 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 Redshaw's.

15. Wet Hire

15.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of Redshaw.

15.2 In the event of Wet Hire, the operator of the Equipment remains an employee of Redshaw and operates the Equipment in accordance with the Client's instructions. As such Redshaw shall not be liable for any actions of the operator in following the Client's instructions.

16. Cancellation

16.1 Redshaw may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice Redshaw shall repay to the Client any sums paid in respect of the Price. Redshaw shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 In the event that the Client cancels delivery of the Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Redshaw as a direct result of the cancellation (including, but not limited to, any loss of profits).

17. Default and Consequences of Default

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Redshaw's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

17.3 Further to any other rights or remedies Redshaw may have under this contract, if the Client has made payment to Redshaw, 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 Redshaw under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

17.4 Without prejudice to any other remedies Redshaw may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire Redshaw may repossess the Equipment as per clause 10.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. Redshaw will not be liable to the Client for any loss or damage the Client suffers because Redshaw has exercised its rights under this clause.

17.5 Without prejudice to Redshaw's other remedies at law Redshaw shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to Redshaw shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to Redshaw becomes overdue, or in Redshaw's opinion the Client will be unable to meet its payments as they fall due; or

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

(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.

18. Privacy Act 1988

18.1 The Client agrees for Redshaw to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Redshaw.

18.2 The Client agrees that Redshaw 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.

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

18.4 The Client agrees that personal credit information provided may be used and retained by Redshaw for the following purposes (and for other agreed purposes or required by):

(a) the provision of Equipment; and/or

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

18.5 Redshaw may give information about the Client to a CRB for the following purposes:

(a) to obtain a consumer credit report;

(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

18.6 The information given to the CRB may include:

(a) personal information as outlined in 18.1 above;

(b) name of the credit provider and that Redshaw 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 Redshaw has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of Redshaw, the Client has committed a serious credit infringement;

(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

18.7 The Client shall have the right to request (by e-mail) from Redshaw:

(a) a copy of the information about the Client retained by Redshaw and the right to request that Redshaw correct any incorrect information; and

(b) that Redshaw does not disclose any personal information about the Client for the purpose of direct marketing.

18.8 Redshaw 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 agreement or is required to be maintained and/or stored in accordance with the law.

18.9 The Client can make a privacy complaint by contacting Redshaw via e-mail. Redshaw 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. Service of Notices

19.1 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.

19.2 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.

20. General

20.1 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.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which Redshaw has its principal place of business, and are subject to the jurisdiction of the courts in Brisbane, Queensland.

20.3 Subject to clause 13, Redshaw 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 Redshaw of these terms and conditions (alternatively Redshaw's liability shall be limited to damages which under no circumstances shall exceed the Price).

20.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

20.5 The Client agrees that Redshaw may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Redshaw to provide Equipment on hire to the Client.

20.6 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.

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

ADDITIONAL TERMS APPLICABLE TO VEHICLE HIRE ONLY

21. Persons who may drive Vehicle

21.1 The Vehicle may be driven during the hire period only by the Client and only if:

(a) they hold a current Australian, overseas licence in written in English, or international driver's license for a period of not less than twelve (12) months (and which is an appropriate license for the Vehicle), excluding any time under a learner's permit or a provisional license) at the time when they are driving the Vehicle and:

(i) where applicable, have the appropriate vehicle endorsement or equivalent in relation to bus or truck hire; and

(ii) for bus hire of buses with a seating capacity of twenty-four (24) or more, the driver must be at least twenty-five (25) years of age with five (5) years of driving experience at the required level of driver's licence; and

(b) they are over twenty-one (21) years of age and under seventy-five (75) years of age; and

(c) they have not had their driver's license cancelled, endorsed or suspended within the last three (3) years.

21.2 If the need arises, consent is given to Redshaw to check validity and currency of any drivers licence used in connection with this agreement.

21.3 When the Client is a Body Corporate, then they shall ensure all drivers have a valid driver's licence and meet the requirements as per clause 21.1 for the term of any hire.

22. Client's Obligations, Use of the Vehicle and Restrictions

22.1 The Client shall, where applicable, ensure that:

(a) any applicable seat belt and child restraint laws are complied with;

(b) passengers shall only ride in the interior or cab of the Vehicle in designated seats;

(c) all the Vehicle's engine oils, coolant and battery levels, and are maintained to the manufacturer's specifications at the Client's cost, as set out in the Vehicle's operations manual located in the glove box;

(d) the tyres are maintained at their proper pressure;

(e) the Vehicle must only be used on a road which is properly formed and constructed as a sealed, metaled or graded gravel road;

(f) all reasonable care is taken in handling and parking the Vehicle and that it is left securely locked when not in use, with the keys kept under the Client's personal control at all times;

(g) the Vehicle is operated in an appropriate manner that shall during operation the Client observes posted speed limits and shall obey all rules and regulations with respect to the correct operation of a motor vehicle;

(h) any insurance excess payable in relation to a claim made by either the Client or Redshaw in relation to any damage caused by, or to, the hire Vehicle whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Redshaw's.

22.2 The Client shall not:

(a) drive the Vehicle if Redshaw has so directed the Client;

(b) drive or take the Vehicle:

(i) out of state in which it is hired in/delivered in;

(ii) above the snow line where applicable;

(iii) on beaches or through streams, rivers, creeks, dams or floodwaters where applicable;

(iv) where applicable, on flood-prone roads, or any roadway where Police or other government authority have issued a warning or caution;

(v) into remote areas on undefined roads or tracks where applicable.

(c) carry any animals in any vehicle without the written permission of Redshaw;

(d) allow any person(s) to smoke in the Vehicle;

(e) operate the Vehicle in any race, speed test, rally, performance or contest, or on any closed road or non-public roadway.

22.3 The Client shall not:

(a) allow the Vehicle to:

(i) be used in contravention of any law;

(ii) be operated without their authority, and then only by an authorised driver named herein;

(iii) be driven by any person if, at the time of them driving the Vehicle, the Client or other person is not the holder of current driver's licence appropriate for the Vehicle;

(iv) be operated by any driver under the influence of alcohol and/or any drug that affects their ability to drive the Vehicle, or have a blood alcohol content that exceeds the legal limit in the State or Territory in which the Vehicle is driven;

(v) convey, propel, push, boost or tow any trailer, boat, other vehicle, or any other object, or load which is incorrectly loaded or secured or is in excess of that for which the Vehicle was manufactured without Redshaw's prior written approval;

(vi) transport more passengers than may be properly accommodated by the seat belt restraints provided in the Vehicle, or a greater load (weight) than that for which the Vehicle was manufactured;

(vii) carry passengers or property for hire or reward of any kind, or carry any flammable substance which has a flash point under 22.8 C, or any other explosive or corrosive materials;

(viii) be used when it is damaged or unsafe;

(ix) be used to transport goods, except in compliance with all necessary approvals, permits, licenses, government requirements (to be obtained at the Client's cost), and in accordance with the manufacturer's and Redshaw's recommendations.

(b) sublet or hire the Vehicle to any other person.

22.4 The Client shall be liable for any:

(a) toll ways, parking or traffic infringement and will supply relevant details as required by the Police and/or Redshaw relating to any such parking or traffic infringement and offences, impoundment, towage and storage during the hire period; and

(b) unauthorised repairs to the Vehicle.

22.5 The Client acknowledges that they are responsible for the refueling of the Vehicle prior to its return from hire. In the event the Vehicle needs to be refueled upon its return from hire then the costs of refueling shall be in addition to the Price together with a Refueling Fee of $2.00 per litre required to refill the tank, and shall be immediately due and payable by the Client.

22.6 In respect of buses on hire in undesignated areas, an additional surcharge per kilometre may apply to all kilometres driven.

22.7 In respect of all 4WD Vehicles, any water immersion damage occurred is at the Client's expense, including vehicle recovery costs. Bypassing Police or local council directional warning signs will void the Client's damage cover.

22.8 The Client shall be responsible for all cost of repair to the Vehicle in any of the following circumstances:

(a) the Vehicle is driven into any of the restricted areas set out in clause 22.2;

(b) the Vehicle is submerged in water;

(c) the person driving the Vehicle is proven to be driving under the influence of drugs and/or alcohol;

(d) there is damage to the undercarriage or roof due to collision with bridges, tunnels, overhead structures is excluded from the damage cover of the Vehicle;

(e) the person driving the Vehicle is:

(i) underage;

(ii) does not have a valid or hold an appropriate class of driver's licence; or

(iii) unqualified to operate the Vehicle.

(iv) the Vehicle is involved in a theft or conversion.

23. Return of the Vehicle

23.1 At the Owners sole discretion a relocation fee will be applicable to any Vehicle being left at any other agent or business address or any other place other than the address from which the Vehicle was hired and all charges to reposition the Vehicle to its original business address shall be chargeable, plus any hire period shorter than originally agreed may have its original hire rates adjusted according to the actual length of hire.

23.2 The Client shall return the Vehicle in the same clean (washed) and tidy condition at the expiry of the term of hire or a surcharge for cleaning may be imposed upon the Client for such cleaning. No refund can be made until a Vehicle has been cleaned and inspected for any damage.

23.3 When a Vehicle is left at any other place than the branch location then termination shall be when the Vehicle inspection shall occur at the time of collection. The Client will be responsible for the Vehicle up until this time of termination, inspection, and collection.

24. Insurance

24.1 Where the Client elects to use Redshaw's insurance excess, the excess amount of five thousand dollars ($5,000) plus GST along with plus a fifteen percent (15%) margin, must be paid prior and agreed to by Redshaw prior to any work commencing.

25. Termination

25.1 Redshaw shall have the right to terminate the hire and take immediate possession of the Vehicle if the Client fails to comply with any of the terms of this agreement, or if the Vehicle is damaged. The termination of the hire under the authority of this clause shall be without prejudice to the other rights of Redshaw and the rights of the Client under this Agreement or otherwise.

ADDITIONAL TERMS APPLICABLE TO VEHICLE AND EQUIPMENT HAULAGE

26. Definitions

26.1 "Consignee" shall mean the person to whom the Vehicle is to be delivered by way of Redshaw's Services.

26.2 "Services" shall mean all Services supplied by Redshaw to the Client (including, but not limited to, anything done or to be done in relation to the Vehicle, or the provision of any services ancillary to the Vehicle such as moving, storing or leaving the Vehicle at any nominated place, loading or unloading the Vehicle, anything else done in relation thereto including the offering of any advice or recommendations.

27. Route Deviation

27.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of the Vehicle that may in the absolute discretion of Redshaw be deemed reasonable or necessary in the circumstances.

28. Demurrage

28.1 The Client will be and shall remain responsible to Redshaw for all its proper charges incurred for any reason. A charge may be made by Redshaw in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of Redshaw. Such permissible delay period shall commence upon Redshaw reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

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Please note that a larger print version of these terms and conditions is available from Redshaw on request.