

TERMS & CONDITIONS OF RENTAL

PARTIES

Endurequip Hoists Pty Ltd ACN 607 530 736 (**Owner**)

The party described as the Customer in the Quote (**Customer**)

Background

- A. The Customer wishes to rent the Equipment from the Owner.
- B. The Owner and the Customer have agreed that the Owner will rent the Equipment to the Customer on the terms and conditions set out in the Quote and this document.

It is agreed

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

Authorised Officer of a party which is a corporation means:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this agreement and notified to the others.

Business Day means a day on which banking institutions generally are open in Brisbane but excluding Saturdays, Sundays and public holidays.

Commencement Date means the date of the rental specified in clause 2.4.

Corporations Act means the Corporations Act 2001 (Cth).

Equipment means the Equipment specified in the Quote and any parts or accessories from time to time attached to or forming part of the Equipment, whether in addition to or in replacement of any part of the Equipment.

Event of Default means an event as described in clause 10.1.

Excluded Tax means a Tax imposed by a jurisdiction on, or calculated by reference to, the net income of a person in the jurisdiction because the person is a resident of or receives income from a source in or has some other connection with that jurisdiction, other than a Tax:

- (a) which is assessed by reference to the gross amount of a payment derived under this agreement or another document referred to in this agreement (without the allowance of a deduction); or
- (b) which is imposed on a person in the jurisdiction only because the person is a party to this agreement or a transaction contemplated by this agreement.

External Administrator means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

GST has the same meaning given to that term in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means:

- (a) in relation to any corporation:
 - (1) its Liquidation;
 - (2) an External Administrator is appointed in respect of the corporation or any of its property;

- (3) the corporation ceases or threatens to cease to carry on its business;

- (4) the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;

- (5) any other ground for Liquidation or the appointment of an External Administrator occurs in relation to the corporation;

- (6) the corporation resolves to enter into Liquidation; or

- (7) an application being made which is not dismissed or withdrawn within ten Business Days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause or consider anything described in sub-paragraphs (1) to (6) (inclusive) above;

- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the Corporations Act; and

- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any relevant jurisdiction.

Initial Term means the rental term specified in the Quote, which commences on the Commencement Date.

Initial Term Expiry Date means the last day of the Initial Term.

Liquidation means:

- (a) a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, bankruptcy or other analogous proceeding; or

- (b) an arrangement, assignment, composition or moratorium with or for the benefit of creditors or any class or group of creditors (including, without limitation, an administration or arrangement under part 5.3A of the Corporations Act).

Obligation means any commitment, covenant, duty, obligation or undertaking whether arising by operation of law, in equity or by statute and whether expressed or implied.

Overholding Period means the period for which the Agreement continues in force after the Initial Term as set out in clause 2.6.

Payment Date means the Commencement Date and then monthly on the same day of each calendar month during the Term as the day on which the Commencement Date falls.

Permitted Security Interest means:

- (a) a Security Interest which is a repairer's lien provided the Customer discharges the lien within five Business Days of its imposition or when it is due for payment (whichever is earlier); and

- (b) a Security Interest constituted or permitted by this agreement.

Personal Information has the meaning in the Privacy Law.

PPS Act means the Personal Property Securities Act 2009 (Cth).

PPS Property means any property over which a Security Interest can be legally granted under the PPS Act.

PPSR means the Personal Property Securities Register maintained under the PPS Act.

Privacy Law means the Privacy Act 1988 (Cth).

Quote means the quote or proposal given by the Owner to the Customer which references these terms and conditions.

Rental Fees means the rental fees as outlined in the Quote.

Tax means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

Tax Invoice means a document that complies with the requirements of the GST Law for a tax invoice.

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Term means the term as determined in accordance with clause 2.5.

Training means such training and instruction as the Owner deems appropriate in relation to the Equipment.

Training and Commissioning Fees means the training and commissioning fees as outlined in the Quote.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
- (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of the agreement or the inclusion of the provision in the agreement.
- (f) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (g) If an act is required to be done on a particular day it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.3 Parties

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

2. RENTAL

2.1 Quote

The Customer will have accepted the Quote if it:

- (a) signs and returns a copy of the Quote; or
- (b) provides any other form of written acceptance of the Quote (for example, in an email or by providing a purchase order); or
- (c) takes delivery of the Equipment; or
- (d) orally agrees to the Quote,

and acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms and Conditions.

2.2 Effect of acceptance

- (a) Upon acceptance of the Quote, an agreement – embodying the Quote and these Terms and Conditions – will come into effect (agreement).
- (b) Only the terms and conditions outlined in the Quote and these Terms and Conditions bind the Owner. All other terms and conditions (including any such terms and conditions contained in any purchase order or other documentation issued by the Customer) have no force or effect.

2.3 Absence of Purchase Order

To avoid any doubt, the absence of a purchase order issued by the Customer does not invalidate any other form of acceptance of the Quote.

2.4 Commencement

This agreement, and the renting of the Equipment, commences on the date the Equipment is despatched from the Owner.

2.5 Term

Subject to any earlier termination provided for under this Agreement, the Term commences on the Commencement Date and continues for the period of the Initial Term and any Overholding Period.

2.6 Overholding Period

Subject to any earlier termination provided for under this Agreement, this agreement will continue in force beyond the Initial Term until a party notifies the other party in writing by giving 90 days notice that it wishes to terminate this agreement.

2.7 Rental Fees

The Customer must:

- (a) pay the Rental Fees to the Owner on each Payment Date during the Term;
- (b) pay any other money due to the Owner under this agreement on demand; and
- (c) make all payments in the manner prescribed by the Owner from time to time.

2.8 Training and Commissioning Fee

- (a) The Customer must pay the Training and Commissioning Fee to the Owner on the Commencement Date.
- (b) Upon payment of the Training and Commissioning Fee, the Owner will arrange for the commissioning of the Equipment and the delivery of the Training to the Customer.

3. CUSTOMER'S OBLIGATIONS

3.1 Delivery and installation

- (a) The Customer is responsible for all costs of delivery, installation and set-up of the Equipment.
- (b) If requested by the Owner, the Customer must execute an acknowledgment of the delivery of the Equipment in a form acceptable to the Owner.
- (c) The Owner is not responsible for any delay in, or for any damage or loss arising as a result of, the delivery, installation or set up of the Equipment.

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3.2 Positive obligations

The Customer must:

- (a) make arrangements for a qualified person to carry out maintenance and service of the Equipment in compliance with AS/NZS 2550.9:1996 at the cost of the Customer at intervals specified in the Owner's manual and at locations approved of by the Owner, so as to keep the Equipment in good working order and repair (normal wear and tear excepted);
- (b) comply with the manufacturer's instructions and recommendations, particularly those specified in the standard operating manual, and the reasonable requirements of the Owner, for the Equipment;
- (c) keep and maintain all log books and daily pre-start-up checks as required by the Owner from time to time;
- (d) replace all items or parts of the Equipment which are broken, worn out, lost, stolen or destroyed (and a replacement item or part must be free of Security Interests, must have a value and utility at least equal to the item or part replaced, assuming that the replaced item or part is in the condition and repair required by this agreement, and becomes the property of the Owner);
- (a) have the Equipment repaired only by properly trained and competent persons;
- (f) operate the Equipment only in a proper and skilful manner and using properly trained and competent personnel;
- (g) comply with all laws and regulations relating to the Equipment, the use or possession of it and pay all fines or penalties of any nature incurred in the use or possession of the Equipment;
- (h) obtain and keep current any registrations and licences required for the Equipment and its use and if the Equipment is registered or licensed in the name of the Customer, when the Customer is obliged to return the Equipment to the Owner it must at the time of return sign and deliver to the Owner all documents, and pay all stamp duty and other fees, necessary to transfer the registration or licence of the Equipment to the Owner;
- (i) use or keep the Equipment only in the place the Owner approves in writing;
- (j) from time to time at the request of the Owner produce the Equipment for inspection or testing by a person authorised by the Owner and allow any person authorised by the Owner access to any place where the Equipment is kept for any purposes relating to this agreement and give that person reasonable assistance;
- (k) obtain and keep current both third party insurance and full comprehensive insurance for the Equipment noting the interest of the Owner and provide the Owner with copies of the certificate of currency for such insurance prior to the Commencement Date and otherwise on the reasonable request of the Owner;
- (l) keep the Equipment under the personal control of the Customer or its employees;
- (m) notify the Owner immediately if the Customer's address changes or if the Equipment is lost or damaged; and
- (n) do everything necessary:
 - (1) to protect the rights of the Owner in relation to the Equipment; and
 - (2) to assist the Owner to register its interest in the Equipment in any place and manner that the Owner requires.

3.3 Negative obligations

The Customer must not (subject to any provisions to the contrary in this agreement):

- (a) alter the Equipment, make any addition to it or install

anything in or on it without the consent of the Owner;

- (b) use the Equipment for any purpose which is unlawful or which might endanger any person or the safety or condition of the Equipment or prejudice the Owner's interest in it, including, without limitation:
 - (1) overloading the Equipment; and
 - (2) using the Equipment for functions or activities that it is not designed;
- (c) install the Equipment in any manner that would cause it to become a fixture to land;
- (d) create any Security Interest over the Equipment or allow one to come into existence other than a Permitted Security Interest; and
- (e) alter or cover up any insignia, number or mark on the Equipment or any identifying plate or mark attached by the Owner.

3.4 Customer's cost

Anything which this agreement requires the Customer to do must be done at the Customer's cost.

4. RISK, RELEASE AND INDEMNITY

4.1 Limited warranty

The Equipment is guaranteed to be structurally free from defects in workmanship and materials for a period of 10 years from the date of initial manufacture and all components are guaranteed free from defects in workmanship and materials for a period of 5 years from the date of purchase, subject to the conditions of the warranty policy available at <http://www.endurequip.com.au/>.

4.2 Risk

The Customer assumes all risks and liability for the Equipment and the use, maintenance, repair and storage of the Equipment (including liability for injury to any person or damage to any property, whether direct or consequential but excluding liability to the extent caused by a breach of the limited warranty set out in clause 4.1).

4.3 Release

- (a) The Customer releases and discharges the Owner from all claims that the Customer has or may have against the Owner, in relation to the Equipment, including in respect of:
 - (1) loss of, or damage to, the Equipment by any cause (including lawful confiscation);
 - (2) any damage to property or death of, or injury to, any person caused directly or indirectly by the Equipment;
 - (3) any claim against the Owner in relation to the Equipment or the use or operation of it;
 - (4) any other thing in relation to which the Customer has assumed the risk or liability under clause 4.2; or
 - (5) the occurrence of any Event of Default,

except to the extent caused by a breach of the limited warranty set out in clause 4.1

- (b) The release in clause 4.3(a) applies irrespective of whether the Owner provides Training or commissioning in relation to the Equipment to the Customer.

4.4 Indemnity

- (a) The Customer must indemnify the Owner and keep the Owner indemnified against all claims, taxes, liabilities, losses and expenses incurred by the Owner as a result of:
 - (1) loss of, or damage to, the Equipment by any cause (including lawful confiscation);
 - (2) any damage to property or death of, or injury to, any person caused directly or indirectly by the Equipment;
 - (3) any claim against the Owner in relation to the Equipment or the use or operation of it;

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- (4) any other thing in relation to which the Customer has assumed the risk or liability under clause 4.2; or
 - (5) the occurrence of any Event of Default,
- except to the extent caused by a breach of the limited warranty set out in clause 4.1.
- (b) The indemnity in clause 4.4(a) applies irrespective of whether the Owner provides Training or commissioning in relation to the Equipment to the Customer.

4.5 Effect of indemnity

- (a) It is not necessary for the Owner to incur any expense before enforcing its right to an indemnity under clause 4.3.
- (b) The Customer must pay to the Owner on demand any amount payable under the indemnity contained in clause 4.3.

5. TITLE AND PPS ACT

5.1 Title

The parties agree that the Customer will have no right, title or interest in the Equipment, except for interests granted in this agreement.

5.2 PPS Act

- (a) In this clause 5, the terms “accession”, “account”, “amendment demand”, “control”, “financing change statement”, “financing statement”, “perfected”, “proceeds”, “purchase money security interest”, “registration event”, “security interest” and “verification statement” have the meanings given to them under the PPS Act.
- (b) The Customer acknowledges and agrees that any security interest created by this agreement, or the transactions contemplated by it:
 - (1) extends to, and acts as a security interest in respect of, any:
 - (A) proceeds (including any account) derived from, or from a dealing with, the Equipment;
 - (B) accession to the Equipment; and
 - (2) continues in the Equipment if the Equipment becomes an accession.
- (c) The Customer agrees to do anything which the Owner may require from time to time to:
 - (1) enable the Owner to register fully valid and effective financing statements or financing change statements with respect to any security interest over PPS Property created by this agreement or the transactions contemplated by it; and
 - (2) ensure that any security interest which is purported to be reserved or created by this agreement, or the transactions contemplated by it, is:
 - (A) a first ranking perfected security interest over all PPS Property;
 - (B) perfected by control to the extent possible under the PPS Act; and
 - (C) if applicable, recorded as a purchase money security interest on the PPSR.
- (d) The Customer undertakes and agrees:
 - (1) to not, without first giving the Owner 14 days written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any security interest created by this agreement or any transaction contemplated by it;
 - (2) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement;
 - (3) to not, without the prior written consent of the Owner, lodge or serve a financing change statement or an amendment demand in relation to any security

interest created by this agreement or any transaction contemplated by it;

- (4) that the Equipment supplied by the Owner to the Customer under this agreement is not intended, and shall not be used, for personal, household or domestic purposes.
- (e) The Customer irrevocably waives its right to receive from the Owner any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPS Act.
- (f) To the extent permitted at law, the Customer and the Owner contract out of, and the Customer waives any rights it may have under, the provisions listed in sections 115(1) and 115(7) of the PPS Act (other than sections 96, 123, 126, 128, 129 and 134(l)).

6. PRIVACY LAW

6.1 Privacy protection obligations

The Customer agrees to comply with the Privacy Law.

6.2 Customer's consent to transfer of personal information

- (a) The Customer consents, acknowledges and agrees that:
 - (1) any Personal Information provided to the Owner may be transferred to and stored at a destination outside of Australia, or processed by personnel or other third parties operating outside of Australia, being Hong Kong, Indonesia, New Zealand, Papua New Guinea and South Africa where it utilises third party service providers to assist the Owner in connection with the administration of this agreement; and
 - (2) by submitting personal information to the Owner, the Customer expressly agrees and consents to the disclosure, transfer, storing or processing of any personal information outside of Australia in the manner permitted by clause 6.1(a)(1).
- (b) In providing this consent, the Customer understands and acknowledges that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to personal information.

7. OWNER'S POWERS

7.1 Protect Equipment

- (a) The Owner may at any time do anything at the Owner's cost unless provided in this agreement (including taking any legal proceedings) which the Owner considers desirable to protect or enforce its rights in relation to the Equipment.
- (b) The Customer irrevocably authorises the Owner to use the name of the Customer, and to act on its behalf, in doing any such thing, subject to the Owner first giving two days' written notice to the Customer of an intention to do so.

7.2 General power

- (a) The Owner may do anything which should have been done by the Customer under this agreement but which the Customer has not done or which the Owner reasonably considers that the Customer has not done properly.
- (b) The Customer must pay the costs incurred by the Owner in doing those items set out at clause 7.2(a), subject to the Owner first giving two days' written notice to the Customer of its intention to do those items set out at clause 7.2(a).

8. CUSTOMER'S WARRANTIES

8.1 Warranties

The Customer warrants that:

- (a) if it is a corporation, it is duly incorporated, validly exists and has the power and authority to carry on its business in the place in which the Equipment will be located;
- (b) it has the power to enter into, and perform its Obligations

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under, this agreement and has obtained all authorisations necessary for it to do so;

- (c) this agreement is enforceable by the Owner in accordance with its terms;
- (d) by accepting the Quote and complying with its obligations under this agreement the Customer does not contravene any law, or directive from a Government Body or agreement to which the Customer is a party;
- (e) all information given to the Owner in relation to this agreement is correct, complete and not misleading; and
- (f) except as notified to the Owner in writing prior to the date of this agreement:
 - (1) the Customer does not act as trustee of any trust; and
 - (2) no litigation, arbitration or administrative proceeding is current, pending or, to the knowledge of the Customer, threatened, which might have a material adverse effect upon the financial condition of the Customer or its ability to perform its Obligations under this agreement.

8.2 Reliance

The Customer acknowledges that the Owner has agreed to enter into the transactions contemplated by the Quote and these Terms and Conditions in reliance upon the warranties in clause 8.1. Each warranty is taken to be repeated on each day that any money is owing (actually or contingently) under this agreement.

9. EXCLUSION OF WARRANTIES

9.1 Customer's acknowledgement

The Customer acknowledges that:

- (a) before accepting the Quote it had the opportunity to examine the Equipment or a sample of the Equipment and satisfy itself as to the condition, suitability and specifications of the Equipment and its fitness for the Customer's purposes;
- (b) it has relied solely upon its own judgment in all matters relating to the selection of the Equipment;
- (c) neither the Owner nor anyone on its behalf has given any warranty or made any representation to the Customer as to the quality, fitness for any particular purpose, suitability or condition of the Equipment except as set out in clause 4.1; and
- (d) all the Customer's obligations under this agreement will continue despite any defect in, or breakdown of, the Equipment or any other matter concerning the Equipment.

9.2 Exclusion of implied warranties

So far as the law permits all conditions and warranties by the Owner which might be implied (whether by statute or otherwise) in relation to the Equipment are excluded.

9.3 Owner's liability

The Owner's liability for a breach of any implied condition or warranty which cannot lawfully be excluded is limited (but only to the extent permitted by law) at the Owner's discretion to replacing the Equipment or supplying equivalent Equipment, paying the cost of replacing the Equipment or acquiring equivalent Equipment, repairing the Equipment or paying the cost of repairing the Equipment.

9.4 Reading down

If any provision of this clause 9 is, or becomes, unlawful or void that provision is to be read down to the extent only to which it is unlawful or void.

10. DEFAULT

10.1 Event of Default

An Event of Default occurs if:

- (a) the Customer does not pay on time any of the Rental Fees or other money payable under this agreement;

- (b) the Customer does not comply with any other obligation under this agreement and if that default can be rectified it is not rectified to the Owner's satisfaction within five Business Days after the Owner gives the Customer a notice requiring the Customer to do so;
- (c) an Insolvency Event occurs with respect to the Customer;
- (d) a Controller is appointed to, or takes possession of, all or any part of the Customer's undertaking or assets;
- (e) if the Customer is an individual, the Customer dies or is convicted of an indictable offence or sentenced to imprisonment;
- (f) any distress or execution is threatened or levied against the Equipment or the Equipment is lawfully seized or impounded;
- (g) any insurance policy in relation to the Equipment is cancelled;
- (h) any representation or warranty made by the Customer in this agreement or in relation to it is untrue or misleading in a material respect;
- (i) the Customer fails to pay any indebtedness to any person when due or within any applicable grace period; and
- (j) a person who holds a Security Interest over any property of the Customer becomes entitled to enforce that Security Interest.

10.2 Powers on default

If an Event of Default occurs then (without affecting any other right or remedy of the Owner under this agreement or otherwise) the Owner may at its option:

- (a) take action to force the Customer to perform its obligations under this agreement; or
- (b) terminate the agreement embodied in the Quote and these Terms and Conditions by notice to the Customer, and in either case the Owner may also take action against the Customer to recover damages for breach of this agreement.

11. EXPIRY OR TERMINATION OF AGREEMENT

11.1 Return of Equipment

- (a) When the agreement embodied in the Quote and these Terms and Conditions expires or is terminated the Customer must immediately return the Equipment to the Owner at the place the Owner reasonably nominates.
- (b) The Customer must return the Equipment in good working order and repair (normal wear and tear excepted).

11.2 Owner may retake possession

If the Customer does not return the Equipment to the Owner when required under clause 11.1, the Owner may retake possession of the Equipment.

11.3 Early termination penalty

- (a) In the event that the Customer wishes to return the Equipment (and cease rental of the Equipment prior to the end of the Initial Term) then the Customer may request that the Owner agree to termination prior to the end of the Initial Term.
- (b) Any request made by the Customer under clause 11.3(a) may be:
 - (1) accepted;
 - (2) accepted subject to conditions; or
 - (3) rejected,

by the Owner in its absolute discretion. If the Owner chooses to accept the Customer's request subject to conditions, it is expressly agreed that one such condition may be that the Owner may require the Customer to pay on the date of termination an amount calculated as the total Rental Fees which would have otherwise been paid had the agreement continued for the remainder of the Initial Term.

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12. GST

12.1 GST exclusive amounts

Unless expressly stated to the contrary all amounts expressed in this agreement are exclusive of GST.

12.2 Taxable supply

- (a) If a party (Supplier) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (Recipient) under this agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.
- (b) The Recipient must pay the amount referred to in subclause 12.2(a) and any interest, penalties, fines or expenses relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

12.3 Tax Invoice

If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by this clause 12.

12.4 Adjustment event

If an adjustment event arises for a Taxable Supply under subclause 12.2(a) of this agreement, the amounts required to be paid must be recalculated (Recalculated Amount) and the Recipient must pay the Supplier the Recalculated Amount.

12.5 Reimbursement

Where a party is required to pay for or reimburse an expense or outgoing of another party, the amount required to be paid or reimbursed is the amount of the expense or outgoing less any input tax credits to which the other party, or the representative member of a GST group to which they belong, is entitled.

13. NOTICES

13.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 13.4 of this agreement or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

13.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail;
- (d) sent by facsimile to the party's current numbers for service; or
- (e) sent by electronic mail to the party's electronic mail address.

13.3 Time

If a notice is sent or delivered in the manner provided in clause 13.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (1) in Australia to an Australian address, the second Business Day after posting; or
 - (2) in any other case, on the tenth Business Day after posting;
- (c) facsimile, when a transmission report has been printed by the sender's facsimile machine stating that the document

has been sent to the recipient's facsimile number; or

- (d) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

13.4 Initial details

The addresses and numbers for service are initially:

- (a) for the Owner, those set out in the Owner's Address Details; and
- (b) for the Customer, those set out in the Customer's Address Details.

13.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

14. GOVERNING LAW AND JURISDICTION

14.1 Governing law

This agreement is governed by and construed in accordance with the laws of Queensland.

14.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 14.2(a).

15. MISCELLANEOUS

15.1 Exercise rights

A single or partial exercise or waiver by the Owner of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

15.2 Merger

If the liability of a party to pay money under this agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this agreement and that fixed by or payable under that deed, judgment, order or other thing.

15.3 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by the Owner of any right, power or remedy conferred on it under this agreement is excluded to the extent permitted by law.

15.4 No assignment

The Customer must not assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of the Owner.

15.5 Remedies cumulative

The rights and remedies of the Owner under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

15.6 Severability

If anything in this agreement is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction then it is severed for that jurisdiction and the rest of this agreement remains in full force and effect in all other jurisdictions.

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15.7 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

15.8 Costs

- (a) The Customer must pay all costs and expenses in connection with the negotiation, preparation, execution and stamping of this agreement and all other documents and transactions referred to in or contemplated by this agreement.
- (b) The Customer must comply with subclause 15.8(a) immediately upon written request from the Owner.
- (c) If the Owner so requests, the Customer must pay the costs and expenses to the Owner, whether or not the Owner is liable for them or has paid or satisfied the relevant amount. If a third party is entitled to the costs and expenses the Customer must pass them on to the third party.

15.9 Taxes

The Customer must:

- (a) pay all Taxes (other than Excluded Taxes) which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this agreement or any payment or receipt or of any transaction contemplated by this agreement; and
- (b) indemnify the Owner against any liabilities resulting from any delay or omission by the Customer to pay any Taxes (other than Excluded Taxes).

15.10 Time

- (a) Time is of the essence of the Customer's obligations under this agreement.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this agreement.
- (c) An agreement to vary a time requirement must be in writing.

15.11 Variation

- (a) The Owner may vary the agreement and these Terms and Conditions from time to time upon written notice to the Customer in writing.
- (b) If the Owner varies the agreement, the Customer may terminate the agreement within 30 days from the date of notification of the variation.
- (c) If the Customer does not terminate the agreement within that period of time, the Customer is deemed to have accepted the variation of the agreement made in accordance with clause 15.11.

15.12 Waiver

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

15.13 Counterparts

This agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf (portable document format) copy of, the executed counterpart to that other party.

15.14 Whole agreement

This agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

15.15 Completion of document

The Customer authorises the Owner to complete any blank spaces in this agreement and, in particular, to insert the serial numbers and other identification details of the Equipment.