

Anderson's Scaffolding Pty Ltd – Terms & Conditions of Trade

These terms and conditions apply to and govern the supply of the Goods, Equipment and/or Services you have engaged us to provide as detailed in the quotation or purchase order attached to these terms or in which these terms are referred. Our quotation or purchase order and these terms and conditions together form one legally binding agreement between Anderson's Scaffolding Pty Ltd ACN 142 038 113 ("Anderson's", "us", "we", "our") and the client, being the person(s) and/or entity(ies) named in or to whom the quotation is addressed ("you", "your", "Client") AND if the client is a corporation, the directors of the client who have signed or otherwise agreed to these terms ("Guarantor") ("Agreement"). The Agreement replaces any earlier agreements, representations, or discussions regarding the services. If anything in these terms and conditions is inconsistent with our quotation, our quotation takes precedence. You may accept this Agreement by doing one or more of the following:

- (a) signing these terms and conditions; or
- (b) signing the quotation or purchase order in which these terms and conditions are referred; or
- (c) continuing to instruct us after receiving this Agreement; or
- (d) orally confirming your acceptance of these terms and conditions; or
- (e) placing an order for the Goods/Equipment; or
- (f) accepting delivery of the Goods/Equipment; or
- (g) placing an order for Goods/Equipment on a "Do and charge" basis.

THE PARTIES AGREE as follows:

1. Definitions

- 1.1 "Anderson's" means Anderson's Scaffolding Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Anderson's Scaffolding Pty Ltd.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Do and charge" means where the Client gives Anderson's a request to do works without being given a quotation, and an invoice for the Price of the works is sent after the works are complete.
- 1.4 "Goods" means all Goods or Services supplied by Anderson's to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Equipment" means all Equipment including any accessories supplied on hire by Anderson's to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Anderson's to the Client.
- 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Anderson's to the Client.
- 1.7 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between Anderson's and the Client in accordance with clause 4 below.
- 1.8 "Services" means any services provided by Anderson's to the Client in connection with the supply of the Goods or Equipment.

2. Acceptance

- 2.1 This Agreement may only be amended with Anderson's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Anderson's.
- 2.2 Where the Client requesting or organising Anderson's to provide Services is acting with or on behalf of any third party and that third party is

intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.

- 2.3 Where Anderson's gives advice, recommendations, information, assistance or service to the Client or the Client's agent, regarding the Goods or Services then it is given in good faith and Anderson's shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Client relying on the same.

3. Change in Control

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

4. Price and Payment

- 4.1 At Anderson's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Anderson's to the Client; or
 - (b) Anderson's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Anderson's reserves the right to change the Price if a variation to Anderson's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to Anderson's in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor or wet weather conditions, limitations to accessing the site, safety considerations, availability of machinery, prerequisite work by any third party not being completed etc which are only discovered on commencement of the Services, acts of God, epidemic, pandemic, or quarantine) will be charged for on the basis of Anderson's quotation and will be shown as variations on the invoice.
- 4.3 At Anderson's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Anderson's, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) by way of instalments/progress payments in accordance with Anderson's payment schedule;
 - (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 fourteen (14) days following the date of any invoice given to the Client by Anderson's.

- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and Anderson's.

- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Anderson's an amount equal to any GST Anderson's must pay for any supply by Anderson's under this or any other agreement for the sale of the Goods/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.

5. Delivery of Goods/Equipment

- 5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Anderson's address; or

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

- 5.2 At Anderson's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then Anderson's shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 5.4 Anderson's may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in this Agreement.
- 5.5 Any time or date given by Anderson's to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and Anderson's will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk to Goods

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery. The Client must ensure that Anderson's is noted as an interested party on the insurance policy required under this clause and the Client must provide a copy of the certificate of currency for the insurance on request by Anderson's.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Anderson's is entitled to receive all insurance proceeds payable for the Goods. The production of this Agreement by Anderson's is sufficient evidence of Anderson's rights to receive the insurance proceeds without the need for any person dealing with Anderson's to make further enquiries.
- 6.3 If the Client requests Anderson's to leave Goods outside Anderson's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 6.4 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Anderson's reserves the right to vary the Price with alternative Goods as per clause 4.2. Anderson's also reserves the right to halt all Services until such time as Anderson's and the Client agree to such changes.
- 6.5 Where Anderson's is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Anderson's shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

7. Accuracy of Clients Plans and Measurements

- 7.1 Anderson's 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, Anderson's accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Anderson's places an order based on these measurements and quantities. Anderson's accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

8. Access

- 8.1 The Client irrevocably authorises and grants an irrevocable licence to Anderson's, and any of

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- Anderson's employees, assigns, or agents to enter any premises where Anderson's believes the Goods are kept and recover possession of the Goods if any amounts payable to Anderson's under this Agreement are overdue or if the Client otherwise breaches this Agreement.
- 8.2 The Client shall ensure that Anderson's, and any of Anderson's employees, assigns, or agents have clear and free access to the work site or any premises where the Goods are kept at all times to enable them to undertake the Services. Anderson's 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 Anderson's.
- 8.3 Anderson's may recover possession of any Goods in transit whether or not delivery has occurred if any amounts payable to Anderson's under this Agreement are overdue or if the Client otherwise breaches this Agreement.
- 8.4 If the Client fails to return the Equipment to Anderson's then Anderson's or Anderson's agent may (as the invitee of the Client) enter the 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.
- 9. Title to Goods**
- 9.1 Anderson's and the Client agree that ownership of the Goods shall not pass to the Client at any time and Anderson's will retain title to the Goods at all times while the Goods are in the possession of the Client. Receipt by Anderson's of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.2 It is further agreed that:
- (a) the Client is only a Bailee of the Goods and must return the Goods to Anderson's on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Anderson's and must pay to Anderson's the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) The Client must not sell, dispose, or otherwise part with possession of the Goods
 - (d) The Client should not convert or process the Goods 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 Anderson's and must sell, dispose of or return the resulting product to Anderson's as it so directs.
 - (e) The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Anderson's.
 - (f) Anderson's may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 10. Personal Property Securities Act 2009 ("PPSA"), Security and Charge**
- 10.1 In this clause, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 To the extent permitted by law, and for better securing payment of the Price plus any costs or charges, the Client and/or Guarantor hereby charges all of its real and personal present and after-acquired property in favour of Anderson's.
- 10.3 The Client and/or Guarantor acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all:
- (a) Goods/Equipment that has previously been supplied and that will be supplied in the future by Anderson's to the Client; and
 - (b) its real and personal present and after-acquired property.
- 10.4 The Client and Guarantor undertake 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 Anderson's 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 10.4(a)(i) or 10.4(a)(ii);
 - (b) indemnify, and upon demand reimburse, Anderson's 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 Goods/Equipment charged thereby, and any costs and disbursements including legal costs incurred in exercising Anderson's rights under this clause;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Anderson's;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Anderson's;
 - (e) Immediately advise Anderson's of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.5 Anderson's, the Client and the Guarantor agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this Agreement.
- 10.6 The Client and/or Guarantor waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.7 The Client and/or Guarantor waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.8 Unless otherwise agreed to in writing by Anderson's, the Client and/or Guarantor waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.9 The Client and/or Guarantor must unconditionally ratify any actions taken by Anderson's under clauses 10.4 to 10.6.
- 10.10 Subject to any express provisions to the contrary nothing in this Agreement is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10.11 The Client and/or Guarantor irrevocably appoints Anderson's and each director of Anderson's as the Client's and/or Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's and/or Guarantor's behalf.
- 11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Anderson's 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 Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Anderson's to inspect the Goods/Equipment.
- 11.2 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 this Agreement (**Non-Excluded Guarantees**).
- 11.3 Anderson's acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in this Agreement or in respect of the Non-Excluded Guarantees,
- Anderson's makes no warranties or other representations under this Agreement including but not limited to the quality or suitability of the Goods/Equipment. Anderson's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, Anderson's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Anderson's is required to replace the Goods under this clause or the CCA, but is unable to do so, Anderson's may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, Anderson's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Anderson's at Anderson's sole discretion;
 - (b) limited to any warranty to which Anderson's is entitled, if Anderson's did not manufacture the Goods;
 - (c) Otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) Anderson's has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) The Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Anderson's 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 Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Anderson's;
 - (e) Fair wear and tear, any accident, or act of God.
- 11.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Anderson's as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Anderson's has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.
- 11.11 Anderson's may in its absolute discretion accept non-defective Goods for return in which case Anderson's may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 11.12 Notwithstanding anything contained in this clause if Anderson's is required by a law to accept a return then Anderson's will only accept a return on the conditions imposed by that law.
- 12. Intellectual Property**
- 12.1 Where Anderson's has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Anderson's.
- 12.2 The Client warrants that all designs, specifications or instructions given to Anderson's will not cause Anderson's to infringe any patent, registered design or trademark in the execution of the Client's order

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- and the Client agrees to indemnify Anderson's against any action taken by a third party against Anderson's in respect of any such infringement.
- 12.3 The Client agrees that Anderson's may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Anderson's has created for the Client.
- ### 13. Default and Consequences of Default
- 13.1 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 Anderson's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes Anderson's any money the Client shall indemnify Anderson's from and against all costs and disbursements incurred by Anderson's in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Anderson's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies Anderson's may have, if at any time the Client is in breach of any obligation (including those relating to payment) under this Agreement Anderson's may suspend or terminate the supply of Goods/Equipment to the Client. Anderson's will not be liable to the Client for any loss or damage the Client suffers because Anderson's has exercised its rights under this clause.
- 13.4 Without prejudice to Anderson's other remedies at law Anderson's shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Anderson's shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Anderson's becomes overdue, or in Anderson's opinion the Client will be unable to make a payment when it falls due;
 - (b) 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
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- ### 14. Cancellation
- 14.1 Anderson's may cancel any Agreement to which this Agreement applies or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice Anderson's shall repay to the Client any money paid by the Client for the Goods/Equipment. Anderson's shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Anderson's as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.
- ### 15. Privacy Act 1988
- 15.1 The Client agrees for Anderson's to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Anderson's.
- 15.2 The Client agrees that Anderson's may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to Anderson's being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by Anderson's for the following purposes (and for other purposes as shall be agreed between the Client and Anderson's or required by law from time to time):
- (a) the provision of Goods/Equipment; and/or
 - (b) the marketing of Goods/Equipment by Anderson's, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) Enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 Anderson's may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Anderson's is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Anderson's, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) That credit provided to the Client by Anderson's has been paid or otherwise discharged.
- ### 16. Building and Construction Industry Security of Payments Act 1999
- 16.1 At Anderson's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 16.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- ### 17. General
- 17.1 The failure by Anderson's to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect Anderson's right to subsequently enforce that provision. If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 This Agreement and any Agreement to which it applies shall be governed by the laws of the state of New South Wales in which Anderson's has its principal place of business, and are subject to the jurisdiction of the courts of Newcastle in that state.
- 17.3 Subject to clause 11 Anderson's 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 Anderson's of this Agreement (alternatively Anderson's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 17.4 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 Anderson's nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 Anderson's may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.6 The Client agrees that Anderson's may amend this Agreement at any time. If Anderson's makes a change to this Agreement, then that change will take effect from the date on which Anderson's notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Anderson's to provide Goods/Equipment to the Client.
- 17.7 Notwithstanding any other provision of this Agreement, and to the maximum extent permitted by law:
- (a) the Client's obligations under any Agreement of which this Agreement forms part (including obligations to pay the Price to Anderson's) remain unaffected by; and
 - (b) the Goods/Equipment will remain "on hire" during any, act of God, poor or wet weather conditions, war, terrorism, pandemic, epidemic, quarantine, or period during which access to the site is limited by safety considerations, availability of machinery or pre-requisite work by any third party not being completed, strike, lock-out, industrial action, fire, flood or storm.
- 17.8 Anderson's is not liable for any loss, negligence or default under any Agreement to which this Agreement applies caused or contributed to by any act of God, poor or wet weather conditions, war, terrorism, pandemic, epidemic, quarantine, limitations to accessing the site, safety considerations, availability of machinery or pre-requisite work by any third party not being completed, strike, lock-out, industrial action, fire, flood, storm or other event beyond Anderson's reasonable control.
- 17.9 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.
- ### 18. Guarantee and Indemnity by Director(s), Trustee(s) and Guarantor
- 18.1 In consideration of Anderson's Agreement to provide Goods/Equipment and/or Services to you, the Guarantors unconditionally guarantee to Anderson's the due and punctual performance by the Client of all of its obligations under each and every Agreement including, without limiting the generality of the foregoing, the payment by you of all moneys, which term includes, without limitation, principal, fees, interest and costs payable or repayable (whether presently or in the future, actually or contingently) under each and every Agreement and the Guarantors promise to pay to Anderson's on demand all moneys which the Client defaults in paying under any Agreement including all moneys arising by way of costs, expenses, bank charges, losses or damages incurred by arising from any default by the Client under or relating to any Agreement.
- 18.2 If any payment made by or on behalf of the Client is alleged to be void or voidable by any liquidator or similar office of the Client under any law related to insolvency, the Guarantor agrees to indemnify Anderson's against any costs or losses it may incur with such claim.

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18.3 Until the whole of the Client's obligations have been paid or satisfied in full, the Guarantor must not (except with the prior written consent of Anderson's) either directly or indirectly, and either before or after the winding up or bankruptcy of the Client, or any person, take any steps to recover or enforce a right or claim against the Client relating to any sum paid by the Guarantor to Anderson's under this Guarantee including without limitation proving or claiming in competition with Anderson's so as to diminish any distribution, dividend or payment which, but for the proof or claim, Anderson's would be entitled to receive pursuant to the winding up or bankruptcy of the Client.

18.4 The Guarantor also acknowledges and agrees in its capacity as Guarantor that any Guarantee and Indemnity that it may have previously given continues to secure any and all liabilities and obligations of the Client.

Additional Terms & Conditions Applicable to Hire Only

19. Hire Period

19.1 Hire charges shall commence from the time the Equipment is collected by the Client from Anderson's premises and will continue until the return of the Equipment to Anderson's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

19.2 If Anderson's agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Anderson's premises and continue until the Client notifies Anderson's that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

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

19.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Anderson's confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Anderson's 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.

20. Risk to Equipment

20.1 Anderson's retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.

20.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Anderson's 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.

20.3 The Client will insure, or self insure, Anderson'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 effect 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.

20.4 The Client accepts full responsibility for and shall keep Anderson's 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.

21. Title to Equipment

21.1 The Equipment is and will at all times remain the absolute property of Anderson's.

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

22. Client's Responsibilities

22.1 The Client shall:

- (a) maintain the Equipment as is required by Anderson's (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
- (b) Notify Anderson's 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;
- (c) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (d) 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 Anderson's or posted on the Equipment;
- (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Anderson's upon request;
- (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (g) 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 Anderson's;
- (h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (i) 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;
- (j) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
- (k) not exceed the recommended or legal load and capacity limits of the Equipment;
- (l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;

22.2 Immediately on request by Anderson's the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Anderson's;
- (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 the negligence of the Client or the Client's agent;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Anderson'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 Anderson's and used by the Client.

23. Wet Hire

23.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of Anderson's and operates the Equipment in accordance with the Client's instructions. As such Anderson's shall not be liable for any actions of the operator in following the Client's instructions.