
EMS Equipment Hire Pty Ltd – Terms & Conditions of Hire

1. Definitions

- 1.1 “EMS Equipment Hire” means EMS Equipment Hire Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of EMS Equipment Hire Pty Ltd.
- 1.2 “Client” means the person/s hiring the Equipment (and/or buying/receiving the Services) 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 “Equipment” means all Equipment including any accessories supplied on hire (whether wet or dry) by EMS Equipment Hire 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 EMS Equipment Hire to the Client.
- 1.4 “Services” means all Services supplied by EMS Equipment Hire to the Client at the Client’s request from time to time (where the context so permits the terms ‘Equipment’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Site” means the location where the Equipment is being delivered or where the Services and Equipment are being supplied.
- 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 EMS Equipment Hire to the Client.
- 1.7 “Price” means the charges payable (plus any GST where applicable) for the Services and/or Equipment hire as agreed between EMS Equipment Hire and the Client in accordance with clause 6 below.
- 1.8 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999”.

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 Services/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 EMS Equipment Hire.
- 2.3 A waiver of the Client’s obligations hereunder is ineffective unless it is in writing and is verified and signed by a duly appointed officer of EMS Equipment Hire.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to EMS Equipment Hire as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services and/or Equipment on the Client’s behalf and/or to request any variation to the Services/Equipment on the Client’s behalf (such authority to continue until all requested Services/Equipment have been supplied or the Client otherwise notifies EMS Equipment Hire in writing that said person is no longer the Client’s duly authorised representative).
- 4.2 In the event that the Client’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client’s behalf, then the Client must specifically and clearly advise EMS Equipment Hire in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to EMS Equipment Hire for all additional costs incurred by EMS Equipment Hire (including EMS Equipment Hire’s profit margin) in providing any Services/Equipment or variations requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

- 5.1 The Client shall give EMS Equipment Hire 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 EMS Equipment Hire as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At EMS Equipment Hire’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by EMS Equipment Hire to the Client; or
 - (b) EMS Equipment Hire’s quoted price (subject to clause 7) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 At EMS Equipment Hire’s sole discretion a deposit may be required.
- 6.3 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by EMS Equipment Hire, which may be:
 - (a) upon delivery of the Services/Equipment;
 - (b) upon completion of the Services;
 - (c) by way of instalments/progress payments in accordance with EMS Equipment Hire’s payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EMS Equipment Hire.
- 6.4 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and EMS Equipment Hire.
- 6.5 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 EMS Equipment Hire nor to withhold payment of any invoice because part of that invoice is in dispute.

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6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to EMS Equipment Hire an amount equal to any GST EMS Equipment Hire must pay for any supply by EMS Equipment Hire under this or any other agreement for the supply of Services/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.

7. Variations

7.1 EMS Equipment Hire reserves the right to change the Price:

- (a) if a variation to the Services originally scheduled (including Equipment and/or operators supplied) is requested;
- (b) where additional Services/Equipment are required due to the discovery of hidden or unidentifiable difficulties or unforeseen circumstances (including, but not limited to, poor weather conditions, limitations to accessing the Site, obscured Site defects which require remedial work (including unseen obstructions, etc.), health hazards and safety considerations (such as the discovery of asbestos/site contamination), prerequisite work by any third party not being completed substantially or at all, etc.) which are only discovered on commencement of the Services; or
- (c) as a result of an increases in EMS Equipment Hire's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services/Equipment or due to relevant industry awards (e.g. site allowance and severance pay), or increases in the costs of labour, which are beyond the control of EMS Equipment Hire.

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

8. Delivery of Equipment & Provision of Services

8.1 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 EMS Equipment Hire's address; or
- (b) EMS Equipment Hire (or EMS Equipment Hire's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.

8.2 At EMS Equipment Hire's sole discretion the cost of delivery is in addition to the Price.

8.3 EMS Equipment Hire may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8.4 Any time specified by EMS Equipment Hire for delivery of the Equipment is an estimate only and EMS Equipment Hire 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 delivered at the time and place as was arranged between both parties.

9. Hire Period

9.1 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.

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

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

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

9.5 No allowance whatsoever can be made for time during which EMS Equipment Hire's Equipment is not in use for any reason, except where EMS Equipment Hire confirms special prior arrangements expressly in writing. Such non-usage will be charged at the applicable rate, as per the Price.

10. Risk

10.1 EMS Equipment Hire retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.

10.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies EMS Equipment Hire 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.

10.3 The Client will insure, or self-insure, EMS Equipment Hire'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.

10.4 The Client accepts full responsibility for and shall keep EMS Equipment Hire 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.

10.5 EMS Equipment Hire reserves the right not to enter the Site if EMS Equipment Hire reasonably believes it unsafe, and the Client shall remain liable for the charges payable until the issue is resolved.

11. Equipment Breakdown

11.1 In the event of Equipment breakdown:

- (a) the Price will not be payable during the time the Equipment is not working, unless the condition is due to the negligent instruction or mishandling on the part of, or attributable to, the Client; and
- (b) EMS Equipment Hire will not be liable for any loss or damage whatsoever that may be occasioned by the Client.

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12. Client's Responsibilities

- 12.1 The Client shall:
- (a) maintain the Equipment as is required by EMS Equipment Hire (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
 - (b) notify EMS Equipment Hire immediately (or at the earliest opportunity) 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 EMS Equipment Hire 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 EMS Equipment Hire upon request;
 - (f) comply with all work 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 EMS Equipment Hire;
 - (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;
 - (n) be responsible for ensuring EMS Equipment Hire has clear and free access and egress to the Site (where Equipment/Services are being supplied) at all times, and that such access is suitable to accept the weight of EMS Equipment Hire's Equipment, to enable the Services to be undertaken. EMS Equipment Hire shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, cross-overs, driveways and concreted or paved or grassed areas), unless due to the negligence of EMS Equipment Hire, and the Client agrees to indemnify EMS Equipment Hire against all costs incurred thereby in recovering such Equipment in the event they become bogged or otherwise immovable;
 - (o) provide adequate security for any of EMS Equipment Hire's Equipment left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that EMS Equipment Hire arrange such security on the Client's behalf.
- 12.2 Should it be necessary for EMS Equipment Hire's Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Price and either:
- (a) charged to the Client's account, plus a margin of ten percent (10%); or
 - (b) payable direct to the salvage company by the Client.
- 12.3 Immediately on request by EMS Equipment Hire the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to EMS Equipment Hire;
 - (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) any lost hire fees EMS Equipment Hire would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in EMS Equipment Hire's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (g) the cost of fuels and consumables provided by EMS Equipment Hire and used by the Client.

13. Wet Hire

- 13.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of EMS Equipment Hire and operates the Equipment in accordance with the Client's instructions. As such EMS Equipment Hire shall not be liable for any actions of the operator in following the Client's instructions.
- 13.2 In the event the Client requires an employee of EMS Equipment Hire to undertake a recognised safety course or medical examination during working hours, the Client will be liable to pay the hourly hire charges for that period, notwithstanding that the Services are not provided during such time. If any course is undertaken outside of EMS Equipment Hire's normal business hours, then the Client shall be liable to pay EMS Equipment Hire's standard (and/or overtime, if applicable) hourly labour rate.
- 13.3 The Client shall provide amenities and first aid services to EMS Equipment Hire's employees in compliance with all applicable health and safety legislation and regulations.

14. Compliance

- 14.1 The Client and EMS Equipment Hire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services/Equipment, including any work health and safety (WHS) laws and any other relevant safety standards or legislation.
- 14.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services/Equipment.

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15. Title

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

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

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 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 and/or collateral (account) – being a monetary obligation of the Client to EMS Equipment Hire for Services – that have previously been supplied and that will be supplied in the future by EMS Equipment Hire to the Client.
- 16.3 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 EMS Equipment Hire 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 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, EMS Equipment Hire 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 EMS Equipment Hire;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of EMS Equipment Hire;
- 16.4 EMS Equipment Hire 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.
- 16.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by EMS Equipment Hire, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client must unconditionally ratify any actions taken by EMS Equipment Hire under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of EMS Equipment Hire agreeing to supply the Services/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Client indemnifies EMS Equipment Hire from and against all EMS Equipment Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EMS Equipment Hire's rights under this clause.
- 17.3 The Client irrevocably appoints EMS Equipment Hire and each director of EMS Equipment Hire as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

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

- 18.1 The Client must inspect the Services/Equipment on delivery and must immediately notify EMS Equipment Hire in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. Further, the Client must notify any other alleged defect in the Services/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow EMS Equipment Hire to inspect the Services/Equipment.
- 18.2 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**).
- 18.3 EMS Equipment Hire acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, EMS Equipment Hire makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services/Equipment. EMS Equipment Hire's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Client is a consumer within the meaning of the CCA, EMS Equipment Hire's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If EMS Equipment Hire is required to replace the Equipment under this clause or the CCA, but is unable to do so, EMS Equipment Hire may refund any money the Client has paid for the Equipment.
- 18.7 If the Client is not a consumer within the meaning of the CCA, EMS Equipment Hire's liability for any defect or damage in the Services/Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by EMS Equipment Hire at EMS Equipment Hire's sole discretion;
 - (b) limited to any warranty to which EMS Equipment Hire is entitled, if EMS Equipment Hire did not manufacture the Equipment;
 - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:

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- (a) the Client has complied with the provisions of clause 18.1; and
 - (b) EMS Equipment Hire has agreed that the Equipment is defective; and
 - (c) the Equipment is returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Equipment is returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, EMS Equipment Hire 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 using the Equipment for any purpose other than that for which they were designed;
 - (c) 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;
 - (d) the Client failing to follow any instructions or guidelines provided by EMS Equipment Hire;
 - (e) fair wear and tear, any accident, or act of God.
- 18.10 Notwithstanding anything contained in this clause if EMS Equipment Hire is required by a law to accept a return then EMS Equipment Hire will only accept a return on the conditions imposed by that law.
- 19. Default and Consequences of Default**
- 19.1 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 EMS Equipment Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes EMS Equipment Hire any money the Client shall indemnify EMS Equipment Hire from and against all costs and disbursements incurred by EMS Equipment Hire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EMS Equipment Hire's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies EMS Equipment Hire may have under this contract, if a Client has made payment to EMS Equipment Hire, 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 EMS Equipment Hire under this clause 19 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.
- 19.4 Without prejudice to any other remedies EMS Equipment Hire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EMS Equipment Hire may suspend or terminate the supply of Services/Equipment to the Client. EMS Equipment Hire will not be liable to the Client for any loss or damage the Client suffers because EMS Equipment Hire has exercised its rights under this clause.
- 19.5 Without prejudice to EMS Equipment Hire's other remedies at law EMS Equipment Hire shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EMS Equipment Hire shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EMS Equipment Hire becomes overdue, or in EMS Equipment Hire'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 EMS Equipment Hire;
 - (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.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies EMS Equipment Hire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EMS Equipment Hire may suspend or terminate the supply of Equipment to the Client. EMS Equipment Hire will not be liable to the Client for any loss or damage the Client suffers because EMS Equipment Hire has exercised its rights under this clause.
- 20.2 EMS Equipment Hire may cancel any contract to which these terms and conditions apply or cancel delivery of Equipment at any time before the Equipment are delivered by giving written notice to the Client. On giving such notice EMS Equipment Hire shall repay to the Client any money paid by the Client for the Equipment. EMS Equipment Hire shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels delivery of Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by EMS Equipment Hire as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Building and Construction Industry Acts**
- 21.1 At EMS Equipment Hire's sole discretion, if there are any disputes or claims for unpaid Services/Equipment then the provisions of the Building and Construction Industry Security of Payment Act 1999 (New South Wales) or the Building and Construction Industry Payments Act 2004 (Queensland) may apply.
- 21.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of any of the Acts listed in clause 21.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 22. Privacy Act 1988**
- 22.1 The Client agrees for EMS Equipment Hire 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 EMS Equipment Hire.
- 22.2 The Client agrees that EMS Equipment Hire 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

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- (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.
- 22.3 The Client consents to EMS Equipment Hire being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Client agrees that personal credit information provided may be used and retained by EMS Equipment Hire for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services/Equipment.
- 22.5 EMS Equipment Hire 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.
- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
 - (b) name of the credit provider and that EMS Equipment Hire 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 EMS Equipment Hire has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of EMS Equipment Hire, 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).
- 22.7 The Client shall have the right to request (by e-mail) from EMS Equipment Hire:
- (a) a copy of the information about the Client retained by EMS Equipment Hire and the right to request that EMS Equipment Hire correct any incorrect information; and
 - (b) that EMS Equipment Hire does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8 EMS Equipment Hire 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.
- 22.9 The Client can make a privacy complaint by contacting EMS Equipment Hire via e-mail. EMS Equipment Hire 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.
- 23. General**
- 23.1 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which EMS Equipment Hire has its principal place of business, and are subject to the jurisdiction of the Dubbo Courts in that state.
- 23.3 Subject to clause 18 EMS Equipment Hire 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 EMS Equipment Hire of these terms and conditions (alternatively EMS Equipment Hire's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services/Equipment supplied).
- 23.4 EMS Equipment Hire may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.5 EMS Equipment Hire may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where EMS Equipment Hire elects to sub-contract out any part of the Services, it shall not be relieved from any liability or obligation under this contract by so doing.
- 23.6 The Client agrees that EMS Equipment Hire 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 EMS Equipment Hire to provide Services/Equipment to the Client.
- 23.7 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.
- 23.8 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.