

D. J. Adair Crane Services Pty. Ltd.

A.B.N. 95 120 467 852

P. O. Box 823, WINDSOR, NSW, 2756

Crane Bookings: 02 9627 9503 · 24 Hr Mobile: 0412 331 113

Accounts: 02 9627 9034 · Fax: 02 9627 9509 · Web: www.djadaircranes.com.au



CREDIT ACCOUNT APPLICATION

To be completed by Applicants – Please complete all sections and read the Terms and Conditions of Trade overleaf.

CLIENT'S TRADE NAME: _____

CLIENT'S FULL or LEGAL NAME: _____

ABN & ACN: _____

DATE COMMENCED TRADING: _____

IS THE APPLICANT A: COMPANY PARTNERSHIP SOLE TRADER TRUST

NATURE OF BUSINESS: _____

REGISTERED BUSINESS ADDRESS: _____

BILLING ADDRESS: _____

PHONE: _____ FAX: _____

EMAIL ADDRESS: _____

WEB ADDRESS: _____

PRINCIPAL CONTACT: _____

TITLE: _____ EMAIL: _____

PHONE: _____ MOBILE: _____

ACCOUNTS CONTACT: _____

TITLE: _____ EMAIL: _____

PHONE: _____ MOBILE: _____

ISSUING OF INVOICES - Invoices are to be: EMAILED POSTED EMAILED & POSTED

INVOICE ISSUING FREQUENCY: DAILY WEEKLY AT END OF MONTH WITH STATEMENT

DATE INVOICES MUST BE RECEIVED FOR MONTHLY ACCOUNTS: _____

AMOUNT OF CREDIT REQUIRED MONTHLY \$ _____

DO YOU SUPPLY PURCHASE ORDER NUMBERS WITH EACH TRANSACTION? YES / NO

DETAILS OF OWNER (if Sole Trader) DIRECTORS (if Company) PARTNERS (if Partnership) TRUSTEES (if Trust):

FULL NAME HOME ADDRESS PHONE D/LICENCE NO DOB

NAME OF RELATED BUSINESS NAMES: _____

ABN: _____ REGISTERED ADDRESS: _____

RELATIONSHIP: _____



CREDIT ACCOUNT APPLICATION

TERMS OF PAYMENT:

(Circle requested Terms)

(A) - ON RECEIPT OF INVOICE - C.O.D.

(B) - SEVEN DAYS FROM DATE OF INVOICE

(C) - FOURTEEN DAYS FROM DATE OF INVOICE

(D) - THIRTY DAYS FROM END OF MONTH OF INVOICE

TRADE REFERENCES:

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____ Email: _____

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____ Email: _____

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____ Email: _____

CONTINGENT LIABILITIES: (must be completed – give details for yes answers)

1. Is Applicant or any Director currently in Receivership or Liquidation? Yes / No

Details: _____

2. Is any court action/s threatened or outstanding against the Applicant? Yes / No

Details: _____

3. Has the Applicant or any Director been involved with any Bankruptcy or failed companies? Yes / No

Details: _____

DECLARATION:

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of D.J. Adair Crane Services Pty Ltd which form part of, and are intended to be read in conjunction with, this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

SIGNED (DJ ADAIR): _____

Name: _____

Position: _____

SIGNED (CLIENT): _____

Name: _____

Position: _____

ID: _____ DOB: _____

SIGNED (WITNESS TO CLIENT'S SIGNATURE): _____

Name: _____

Date: _____

1 Definitions

- 1.1 "D.J. Adair" means D.J. Adair Crane Services Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of D.J. Adair Crane Services Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting D.J. Adair to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Equipment" means all Equipment (including any container) supplied on hire by D.J. Adair to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by D.J. Adair to the Client.
- 1.4 "Charges" means the cost of the hire (plus any GST where applicable) of the Equipment as agreed between D.J. Adair and the Client subject to clause 5 of this contract.
- 1.5 "Dry Hire" means that the Equipment is supplied by D.J. Adair without an operator.
- 1.6 "Wet Hire" means that the Equipment is supplied by D.J. Adair with an operator, who shall at all times remain an employee or representative of D.J. Adair.
- 1.7 "Site" means the location/s at which the Equipment is to be operated.
- 1.8 "Term" means the term of the hire of the Equipment as specified in this Agreement, or such further period as agreed by the parties in writing.
- 1.9 "Minimum Hire Period" means the minimum Term, as specified in this Agreement, and calculated at the appropriate hourly rate plus travel unless otherwise specified by D.J. Adair prior to commencement of the Term.
- 1.10 "Agreement" means the agreed arrangement, either verbal or written, between D.J. Adair and the Client, and include (and are meant to be read in conjunction with) these terms and conditions, D.J. Adair's "Craneage Price List", Craneage Quotation, Craneage Estimate, authority to hire, or any other form/s as provided by D.J. Adair to the Client (such forms shall be known as Schedules).
- 1.11 "Goods" means any cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by D.J. Adair for the Client.
- 1.12 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2 Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by this Agreement if the Client places an order for Equipment, or accepts Delivery.
- 2.2 In the event that any Schedule (as stated in clause 1.10) provided by D.J. Adair contradicts these Terms and Conditions of Trade, the Schedule will supersede these Terms and Conditions, but only in respect of the relevant clauses. All other clauses and conditions of these Terms and Conditions of Trade shall remain in effect.
- 2.3 D.J. Adair agrees to hire the Equipment to the Client based on this Agreement (to the exclusion of anything to the contrary in the terms of the Client's order), which may only be amended with D.J. Adair's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and D.J. Adair.
- 2.4 A waiver of the Client's obligations hereunder is ineffective unless it is in writing and is verified and signed by a duly appointed office of D.J. Adair.
- 2.5 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 Section 14 of the Electronic Transactions (Queensland) Act 2001 (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 The Client acknowledges that entering into this Agreement:
- (a) they have relied solely on their own skill and judgement, and not relied in any way on any representations, statements or warranties made by D.J. Adair;
 - (b) to the maximum extent permitted by law, and subject to clause 15, no warranty is provided by D.J. Adair in respect of the condition of the Equipment or its fitness for any particular purpose. The Client shall indemnify and hold harmless D.J. Adair in respect of all claims arising out of the use of the Equipment, including any liability for loss, damage, injury or death arising out of the delivery, installation, ownership, hiring, use or operation of the Equipment of whatsoever nature or kind.

3 Errors and Omissions

- 3.1 The Client acknowledges and accepts that D.J. Adair shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by D.J. Adair in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by D.J. Adair in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of D.J. Adair; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4 Change in Control

- 4.1 The Client shall give D.J. Adair 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 D.J. Adair as a result of the Client's failure to comply with this clause.

5 Charges and Payment

D.J. Adair Crane Services Pty Ltd - Terms and Conditions

- 5.1 The Client shall pay the Charges to D.J. Adair for the duration of the Term, which (at D.J. Adair's sole discretion) shall be either:
- (a) as indicated on invoices provided by D.J. Adair to the Client in respect of Equipment supplied on hire;
 - (b) D.J. Adair's current Charges as at the date of Delivery, according to D.J. Adair's current "Craneage Price List"; or
 - (c) calculated on a working day of eight (8) hours per day (from 8.00am to 3.30pm, allowing a thirty (30) minute lunch break); or
 - (d) D.J. Adair's quoted Charges (subject to clauses 5.2), which shall be binding upon D.J. Adair provided that the Client shall accept in writing D.J. Adair's quotation within the acceptable period specified therein.
- 5.2 D.J. Adair reserves the right to change the Charges at any time in the event of a variation to D.J. Adair's quotation or where Equipment is used outside D.J. Adair's standard working hours (as specified in clause 5.1(c) above) or on a weekend or public holiday. D.J. Adair shall advise the Client in writing of any change to the Charges and the effective date of the change. A fuel levy shall be payable where the price of diesel fuel exceeds the fuel price specified in D.J. Adair's "Craneage Price List".
- 5.3 D.J. Adair may in its sole discretion require the Client to pay a deposit.
- 5.4 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by D.J. Adair, which may be:
- (a) on delivery of the Equipment; or
 - (b) for certain approved Clients, due either fourteen (14) or thirty (30) days following the date of the invoice;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by D.J. Adair.
- 5.5 The Client will make payment to D.J. Adair on/by each due date by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and D.J. Adair.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by D.J. Adair nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to D.J. Adair an amount equal to any GST D.J. Adair must pay for any supply of Equipment by D.J. Adair under this or any other agreement. 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 Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 5.8 Receipt by D.J. Adair of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then D.J. Adair's rights and ownership in relation to the Equipment, and this Agreement, shall continue.

6 Hire Period

- 6.1 The Term shall commence from the time the Equipment departs from D.J. Adair's premises and will continue until (whichever last occurs):
- (a) the date of expiry of the Term specified in this Agreement; or
 - (b) the return of the Equipment to D.J. Adair's premises in an on-hire condition; or
 - (c) the date which the Equipment is available for Recovery by D.J. Adair, as notified by the Client (if such Recovery is agreed to by D.J. Adair), provided the Equipment is recovered in an on-hire condition; or
 - (d) the expiry of the Minimum Hire Period, whichever last occurs.
- 6.2 Notwithstanding clause 6.1, the Client shall provide a minimum of one (1) weeks' notice to D.J. Adair of their intention to return the Equipment, and the date of expiry or cessation of this Agreement shall in all cases be treated as a full day's hire.
- 6.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless D.J. Adair confirms special prior arrangements in writing. Non-usage for inclement weather and/or industrial disruptions will be charged at the applicable rate, as per the Charges. In the event of Equipment breakdown:
- (a) provided the Client notifies D.J. Adair immediately, 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;
 - (b) D.J. Adair will not be liable for any loss or damage whatsoever that may be occasioned by the Client.

7 Delivery and Recovery

- 7.1 As agreed by D.J. Adair and at D.J. Adair's sole discretion:
- (a) delivery of the Equipment ("**Delivery**") shall take place when the Client takes possession of the Equipment at either D.J. Adair's premises or the Client's Site;
 - (b) recovery of the Equipment ("**Recovery**") will be completed when the Equipment has been collected from the Client's Site and returned to D.J. Adair's premises.
- 7.2 Delivery of the Equipment to a third party nominated by the Client is deemed to be Delivery to the Client for the purposes of this Agreement.
- 7.3 In the event the Client is unable to accept Delivery and/or Recovery as arranged, or there are any delays due to free and clear access to the Site not being available, D.J. Adair shall be entitled to charge all additional costs involved with the redelivery and/or storage, or subsequent attempts at Recovery, as applicable, and all Charges lost as a direct result of the Equipment being unavailable.
- 7.4 Any time or date given by D.J. Adair to the Client is an estimate only. The Client must still accept delivery of the Equipment even if late and D.J. Adair will not be liable for any loss or damage incurred by the Client as a result of any delay in the delivery and/or recovery of the Equipment, commencement of work or interruption to the continuity of work due to reasons beyond the practical control of D.J. Adair (including, but not limited to, any event outlined in clause 22.8, breakdown of plant, transport delays, accidents, or other labour difficulties, etc.).

8 Risk

D.J. Adair Crane Services Pty Ltd - Terms and Conditions

- 8.1 The Client accepts full responsibility for the safekeeping of the Equipment and shall keep D.J. Adair indemnified against all liability in respect of all actions, proceedings, claims, demands, notices, losses, damages, costs and expenses to which D.J. Adair shall or may become liable in respect of (including without limitation):
- (a) any loss, theft or damage to the Equipment or any property, or any death or injury to persons or otherwise arising from 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;
 - (b) any underground or overhead services, footpaths, roads, driveways, grounds, lawns, fences or any other like property, whether public or private, however sustained, caused or contributed to by the use of the Equipment.
- 8.2 The Client shall disclose to D.J. Adair the nature of the Goods to be handled, lifted and/or carried. If D.J. Adair deems the Goods are, or may become dangerous or offensive, D.J. Adair may do anything it believes to be appropriate to avoid or minimise any loss, damage or offence.
- 8.3 D.J. Adair is not a Common Carrier, and will accept no liability as such. Accordingly, D.J. Adair reserves the right to refuse to lift or move any particular item(s) at its sole discretion.
- 8.4 Unless otherwise agreed to in writing between the parties, D.J. Adair shall not be deemed the principle contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliancy under any relevant legislation or policy, etc.).

9 Title

- 9.1 The Equipment is and will at all times remain the absolute property of D.J. Adair, and the Client must return the Equipment to D.J. Adair upon request to do so.

10 Personal Property Securities Act 2009 ("PPSA")

- 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 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 D.J. Adair for services – that has previously been supplied and that will be supplied in the future by D.J. Adair to the Client.
- 10.3 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 D.J. Adair 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 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, D.J. Adair 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 registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of D.J. Adair;
 - (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 D.J. Adair.
- 10.4 D.J. Adair 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.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by D.J. Adair, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by D.J. Adair under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 10.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period shall clause 10 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 10 will apply generally for the purposes of the PPSA.

11 Security and Charge

- 11.1 In consideration of D.J. Adair agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies D.J. Adair from and against all D.J. Adair's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising D.J. Adair's rights under this clause.
- 11.3 The Client irrevocably appoints D.J. Adair and each director of D.J. Adair as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12 Wet Hire

- 12.1 D.J. Adair will supply a standard selection of slings with the Equipment and, in the event of any breakdown or stoppage of the Equipment, will (subject to clauses 6.3 and 7.4) take all reasonable actions and (if required) replace any Equipment as quickly as possible.

- 12.2 The Client shall:
- (a) be responsible for:
 - (i) ensuring that D.J. Adair has clear and free access and egress to and from the Site;
 - (ii) ensuring that the ground (and access) at the Site is firm and stable, with adequate compaction to support the Equipment under its wheels, tracks or outriggers, including ensuring any footpaths, curbs and channels are suitably planked;
 - (iii) ensuring that the Site (or access thereto) does not have excessive slope;
 - (iv) ensuring that adequate lighting is provided during the provision of services;
 - (v) making all necessary arrangements where any access is required through private property;
 - (vi) ensuring that a maximum clearance of three and a half metres (3.5m) is allowed in respect of overhead obstacles, trees or power lines;
 - (vii) notifying D.J. Adair of the location of any underground services on Site.
 - (b) provide amenities and first aid services to D.J. Adair's employees in compliance with all applicable health and safety legislation in operation in the state where the services are undertaken;
 - (c) should it be necessary for the 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 Charges and either:
 - (i) charged to the Client's account, plus a margin of ten percent (10%); or
 - (ii) payable direct to the salvage company by the Client.
 - (d) declare the weight of the Goods, and:
 - (i) D.J. Adair shall be entitled to rely on such declared weight when arranging for the handling thereof;
 - (ii) the Client shall be responsible for all extra cost and risk incurred by D.J. Adair, and for any and all damage sustained, by reliance on the declared weight if the weight declared is found to be incorrect.
 - (e) provide adequate security for any Equipment left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that D.J. Adair arrange such security on the Client's behalf.
- 12.3 D.J. Adair reserves the right not to enter the Site if D.J. Adair believes it unsafe, and the Client shall remain liable for the Charges payable until the issue is resolved.
- 12.4 Notwithstanding that the operator of the Equipment is an employee or representative of D.J. Adair, the operator shall operate the Equipment in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 12.5 In the event the Client requires an employee of D.J. Adair 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 Equipment is not being operated during such time. If any course is undertaken outside of the Term then the Client shall be liable to pay D.J. Adair's standard (and/or overtime, if applicable) hourly labour rate.

13 Dry Hire

- 13.1 If the Client requires the Equipment to be delivered, installed and/or recovered from the Site, then the Client shall notify D.J. Adair in writing, and pay in addition to the Charges all freight, transportation and other charges and/or costs incurred, including loading and unloading at the Site, if applicable.
- 13.2 The Client shall:
- (a) inspect the Equipment on Delivery, to satisfy itself as to the condition, specifications, quality and fitness of the Equipment for its intended purpose.
 - (b) at all times, and at its own expense, keep clean and maintain the Equipment in proper working order and good repair;
 - (c) notify D.J. Adair immediately of any mechanical breakdown or accident relating to the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (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 D.J. Adair or posted on the Equipment;
 - (e) ensure that all persons driving and/or operating Equipment are suitably instructed in its safe and proper use and where necessary holds an appropriate current Certificate of Competency and/or other relevant licence;
 - (f) comply with all applicable laws, regulations, rules and requirements necessary for the safe and lawful operation of the Equipment;
 - (g) comply with any maintenance or care instructions provided by D.J. Adair;
- 13.3 The Client shall not:
- (a) exceed the recommended or legal load and capacity limits of the Equipment;
 - (b) use or carry any illegal, prohibited or dangerous substance in, or on, the Equipment;
 - (c) alter or make any additions to the Equipment (including, but without limitation, defacing or erasing any identifying mark, plate or number on, or in, the Equipment);
 - (d) fix any of the Equipment in such a manner as to make it a permanent fixture;
 - (e) part with or share possession and/or control of the Equipment;
 - (f) permit the Equipment, or any part thereof, to be used by any person for any other work;
 - (g) assign the benefit of this Agreement to any other person;
 - (h) charge, mortgage or create a lien over the Equipment;
- 13.4 The Client indemnifies D.J. Adair against, and shall pay D.J. Adair immediately on demand, all costs relating to:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to D.J. Adair;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in D.J. Adair's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (d) the cost of fuels and consumables provided by D.J. Adair and used by the Client or

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- (e) any lost hire fees D.J. Adair would have otherwise been entitled to for the Equipment, under this, or any other hire agreement.
- 13.5 The Client must maintain adequate insurance policies with reputable insurers during the Term of this Agreement, as approved by D.J. Adair (or arranged by D.J. Adair at the Client's expense if otherwise agreed between the parties) covering:
- (a) Public Liability arising from the use of the Equipment by the Client;
 - (b) loss or damage to the Equipment (including, but limited to, accident fire, theft and burglary and all other usual risks); and
 - (c) Road Risk liability cover for road registered Equipment;
 - (d) other insurance which are required by law or otherwise by D.J. Adair for time to time.
- 13.6 Notwithstanding D.J. Adair's retention of title in the Equipment, all risk for the Equipment passes to the Client on Delivery.
- 13.7 The Client will not use the Equipment, nor permit it to be used, in such a manner which may make any insurance invalid or capable of cancellation.
- 13.8 The Client is not authorised to pledge D.J. Adair's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs.
- 13.9 In the event of damage to the Equipment, the Client shall be responsible to pay on demand all costs involved in repairing such damage, including but not limited to:
- (a) damage caused by the negligence of the Client, or its agent(s);
 - (b) damage caused by vandalism;
 - (c) damage caused to the Equipment by operator misuse thereof;
 - (d) damage to the tracks and/or tyres of the Equipment, other than damage caused by fair wear and tear; and/or
 - (e) damage caused by the ordinary use of the Equipment.

14 Cartage of Goods

- 14.1 The Client warrants that when Goods are given to D.J. Adair for carriage, the Client is acting as an agent for each person who has an interest in the Goods, and each of them is a party to this Agreement and is bound by these terms and conditions.
- 14.2 The Client hereby authorises any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of D.J. Adair be deemed reasonable or necessary in the circumstances.
- 14.3 The Goods shall be deemed delivered when they are left at the place nominated by the Client. If the nominated place of delivery is unattended, D.J. Adair may choose whether to leave the Goods there, or return them to the Client. If the Goods are stored or returned to the Client, all reasonable costs and charges must be paid by the Client.
- 14.4 D.J. Adair holds a lien over the Goods, and any related documents in D.J. Adair's possession, as security for all sums payable to D.J. Adair by the Client. D.J. Adair may sell the Goods without giving the Client notice where any event as per clause 16.4 arises. In this instance D.J. Adair shall be entitled to offset against the money received any money owed to it by the Client.
- 14.5 The Client must comply with all legal requirements (and any requirements of the person(s) to whom D.J. Adair delivers the Goods) in relation to the Goods, including requirements relating to their shape, packaging, labelling and transportation.
- 14.6 On the completion of the carriage of the Goods, the Client must ensure (if required to do so) that any containers, pallets or packaging that are delivered to the Client with the Goods are returned to their respective legal owner.
- 14.7 The Charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the consignor's premises and shall be payable and non-refundable in any event.

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

- 15.1 The Client must inspect the Equipment on Delivery (and/or services on completion) and must within forty-eight (48) hours of such time notify D.J. Adair in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect therein as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow D.J. Adair to inspect/review the Equipment (and/or services).
- 15.2 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**").
- 15.3 D.J. Adair acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, D.J. Adair makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment (and/or services). D.J. Adair's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, D.J. Adair's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If D.J. Adair is required to rectify, re-supply, or pay the cost of re-supplying the Equipment (and/or any services) under this clause or the CCA, but is unable to do so, then D.J. Adair may refund any money the Client has paid for the Equipment (and/or services) but only to the extent that such refund shall take into account the value of any Equipment (and/or services) and consumables which have been provided to the Client which were not defective.
- 15.7 If the Client is not a consumer within the meaning of the CCA, D.J. Adair's liability for any defect or damage in the Equipment (and/or services) is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by D.J. Adair at D.J. Adair's sole discretion;
 - (b) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, D.J. Adair 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 the Equipment;
 - (b) the Client interfering with the Equipment in any way without D.J. Adair's written approval to do so;

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- (c) the Client using the Equipment for any purpose other than that for which it was designed;
- (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (e) the Client failing to follow any instructions or guidelines provided by D.J. Adair;
- (f) fair wear and tear, any accident, or act of God.

16 Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at D.J. Adair's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes D.J. Adair any money the Client shall indemnify D.J. Adair from and against all costs and disbursements incurred by D.J. Adair in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, D.J. Adair's contract default fee, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies D.J. Adair may have, if at any time the Client is in breach of any obligation under this Agreement, including where the Client's account is in arrears by more than sixty (60) days, D.J. Adair may:
- (a) take action to enforce performance by the Client and/or recover damages (including the costs of pursuing such action);
 - (b) repossess the Equipment as per clause 17.5,
 - (c) suspend or terminate the supply of Equipment to the Client, or this Agreement (either in whole or part), and any of its other obligations under these terms and conditions; and
 - (d) D.J. Adair will not be liable to the Client for any loss or damage the Client suffers because D.J. Adair has exercised its rights under this clause.
- 16.4 Without prejudice to D.J. Adair's other remedies at law, D.J. Adair shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies D.J. Adair may have and all amounts owing to D.J. Adair shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to D.J. Adair becomes overdue, or in D.J. Adair's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client has exceeded any applicable credit limit provided by D.J. Adair;
 - (c) the Client fails to perform any obligation under this Agreement, and that failure is incapable of remedy, or if capable of remedy, continues for a period of ten (10) business days after notice is given to the Client by D.J. Adair requiring that failure to be remedied; or
 - (d) 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
 - (e) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
 - (f) if the Equipment is abandoned, seized or appropriated by any authority and not released within five (5) business days.

17 Cancellation/Termination

- 17.1 Without prejudice to any other remedies D.J. Adair may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions D.J. Adair may suspend or terminate the supply of Equipment to the Client. D.J. Adair will not be liable to the Client for any loss or damage the Client suffers because D.J. Adair has exercised its rights under this clause.
- 17.2 D.J. Adair may terminate this Agreement, or cancel Delivery, at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice D.J. Adair shall repay to the Client any sums paid in respect of the Charges. D.J. Adair shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client terminates this Agreement, or otherwise cancels Delivery, the Client shall be liable for any and all loss incurred (whether direct or indirect) by D.J. Adair as a direct result of the cancellation (including, but not limited to, any loss of profits). In the event the cancellation is made after twelve (12) noon on the day prior to the Term, the Client shall be liable to pay a cancellation fee (equal to a minimum four (4) hour hire) or such other fee as determined by D.J. Adair from time to time.
- 17.4 Except so far as clause 17.2 applies, on termination D.J. Adair shall be entitled to:
- (a) retain all monies paid to it under this Agreement; and
 - (b) recover from the Client any other monies due and owing under this Agreement as at the date of termination.
- 17.5 On termination, the Client must deliver up to D.J. Adair the Equipment (together with all parts and accessories) in clean and good order as delivered (with allowance for fair wear and tear). If the Client fails to return the Equipment to D.J. Adair, as is required under this Agreement or when requested to do so, then D.J. Adair, or D.J. Adair's agent, may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by D.J. Adair as a result of D.J. Adair so recovering the Equipment shall be charged to the Client.

18 Privacy Act 1988

- 18.1 The Client agrees for D.J. Adair 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 D.J. Adair.
- 18.2 The Client agrees that D.J. Adair may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

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- 18.3 The Client consents to D.J. Adair being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Client agrees that personal credit information provided may be used and retained by D.J. Adair for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 18.5 D.J. Adair may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
 - (b) name of the credit provider and that D.J. Adair 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 D.J. Adair has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of D.J. Adair, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Client shall have the right to request (by e-mail) from D.J. Adair:
- (a) a copy of the information about the Client retained by D.J. Adair and the right to request that D.J. Adair correct any incorrect information; and
 - (b) that D.J. Adair does not disclose any personal information about the Client for the purpose of direct marketing.
- 18.8 D.J. Adair will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Client can make a privacy complaint by contacting D.J. Adair via e-mail. D.J. Adair will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19 Other Applicable Legislation

- 19.1 At D.J. Adair's sole discretion, if there are any disputes or claims for unpaid hire of Equipment then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales) or the Building and Construction Industry Payments Act 2004 (Queensland) may apply.
- 19.2 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 19.1 (each as applicable), except to the extent permitted by the Act where applicable.

20 Service of Notices

- 20.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21 Trusts

- 21.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not D.J. Adair may have notice of the Trust, the Client covenants with D.J. Adair as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of D.J. Adair (D.J. Adair will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

22 General

- 22.1 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 prohibited, invalid, void, illegal or unenforceable in any jurisdiction, that provision will, as to that jurisdiction be ineffective to the extent of the prohibition, invalidity or unenforceability without affecting, prejudicing or impairing the validity, existence, legality and enforceability of the remaining provisions of these terms and conditions, or that provision is any other jurisdiction.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which D.J. Adair has its principal place of business, and are subject to the jurisdiction of the Sydney Courts in that state.
- 22.3 Subject to clause 15, D.J. Adair shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit or any rectification costs), or any third party claims, suffered by the Client in connection with the use of the Equipment and/or the provision of services by D.J. Adair, or arising out of a breach by D.J. Adair of these terms and conditions. Alternatively, D.J. Adair's liability shall be limited to damages which under no circumstances shall exceed the Charges.
- 22.4 D.J. Adair may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of D.J. Adair.
- 22.6 D.J. Adair may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of D.J. Adair's sub-contractors without the authority of D.J. Adair.
- 22.7 The Client agrees that D.J. Adair may amend these terms and conditions at any time. If D.J. Adair makes a change to these terms and conditions, then that change will take effect from the date on which D.J. Adair notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for D.J. Adair to provide any Equipment to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.