

TERMS AND CONDITIONS

1. Preamble

These terms and conditions (**Conditions**) set out the terms on which the Hirer agrees, subject to acceptance of the Order by Moreton Hire (at its sole discretion), to supply Hired Goods and/or Services.

2. Operation of this Contract

This Contract begins on the date the Order (as may be amended from time to time by written instructions or by subsequent orders in respect of the same Event) is accepted by Moreton Hire and ends either:

- (a) on the Return Date;
- (b) on the date the Services end; or
- (c) on the date when this Contract is terminated in accordance with its terms, (whichever occurs last) (**Term**).

3. Order of prevalence

In case of inconsistencies between the Order and these Conditions, these Conditions will prevail over the Order. For the avoidance of doubt, the Order and, these Conditions form part of this Contract.

4. Validity period of an Order

Any Order is effective for a period of 28 days from the date of its issue by Moreton Hire.

5. Hired Goods and Services

- (a) The Hired Goods and Services are described in the Order.
- (b) Moreton Hire reserves the right to amend the Hired Goods and Services, if necessary to comply with any applicable statutory or regulatory requirement, or if the amendment does not materially affect the nature or quality of the Hired Goods and Services and Moreton Hire notifies the Hirer in any such event.

6. Title and risk

- (a) In no case does title to the Hired Goods pass to the Hirer. Title to and ownership of the Hired Goods always remains with Moreton Hire.
- (b) The risk of loss or damage to the Hired Goods passes to the Hirer on handover of the Hired Goods in accordance with clause 7(d), including where the Hired Goods are left at the Handover Location without requiring signature for handover, for the Term.
- (c) At all times, the Hirer must:
 - (i) maintain the Hired Goods and their packaging – where required - in satisfactory and clean condition and keep them insured against all risks for their replacement price on Moreton Hire's behalf from the date of handover;
 - (ii) notify Moreton Hire immediately if the Hirer becomes subject to any of the events listed in clause 28(a)(i) to 28(a)(v); and
 - (iii) give Moreton Hire such information as Moreton Hire may reasonably require from time to time relating to the Hired Goods, and the ongoing financial position of the Hirer.

7. Handover of Hired Goods and Services

- (a) Moreton Hire will use reasonable endeavours:
 - (i) to ensure that the Hired Goods and/or Services are delivered to the Hirer on or before the Handover Date using reasonable care and skill at the Handover Location; and
 - (ii) to provide a handover note referring to the Order; and
 - (iii) to indicate at handover that the Hirer must return any packaging material to Moreton Hire, as relevant. If required by Moreton Hire, the Hirer must make any

such packaging materials available for collection at such times as Moreton Hire reasonably requests.

- (b) Moreton Hire may conduct a Hired Goods count before and/or upon return of the Hired Goods, which will be final.
- (c) Moreton Hire will deliver the Hired Goods and/or Services either at the location:
 - (i) set out in the Order;
 - (ii) such other location as the parties may agree in writing; or
 - (iii) if the Hirer collects the Hired Goods, at the address provided by Moreton Hire in writing or such other location as may be agreed with the Hirer before handover on Handover Date,

(Handover Location).
- (d) Handover of the Hired Goods is completed either:
 - (i) upon the completion of Moreton Hire unloading and installing the Hired Goods at the Handover Location, including where the Hired Goods are left at the Handover Location without requiring signature for handover;
 - (ii) the Hirer loading the Hired Goods at the Handover Location where the Hired Goods are collected by the Hirer; or
 - (iii) when Moreton Hire advises the Hirer that the handover is completed.
- (e) Any Handover Date quoted for handover of the Hired Goods is approximate only, and the time of handover is not of the essence. Moreton Hire will not be liable for any delay in handover of the Hired Goods or the Services. Where practicable, Moreton Hire will inform the Hirer of any change of Handover Date.
- (f) If the Hirer requests in writing that handover of the Hired Goods and/or Services is to be made in advance of the Handover Date or postponed beyond the Handover Date, Moreton Hire will use its reasonable commercial endeavours to re-schedule handover accordingly but will otherwise be under no obligation to comply with the Hirer's request.
- (g) If Moreton Hire accepts a request of the Hirer under clause 7(f), Moreton Hire may apply such Additional Charge as Moreton Hire considers to be reasonably appropriate to reflect the impact upon Moreton Hire's resources of complying with such request, including charges relating to freight, storage (including storage of the Hirer's property), installation, dismantling, packing and/or pick-up.
- (h) If the Handover Date is changed, the Hirer must use its best endeavours to prepare the Handover Location and to do all other things necessary to enable it to comply with the request and to accept early handover.
- (i) If Moreton Hire fails to deliver the Hired Goods and/or Services, its liability is limited to the costs and expenses incurred by the Hirer in obtaining hire of replacement Hired Goods and/or Services of similar description and quality in the cheapest market available. Moreton Hire will have no liability for any failure to deliver the Hired Goods and/or Services to the extent that such failure is caused by a Force Majeure Event or the Hirer's failure to provide Moreton Hire with adequate handover instructions or any other instructions that are relevant to the supply of the Hired Goods and/or Services.
- (j) Moreton Hire is not responsible to the Hirer or any person for any loss or damage:
 - (i) to Hired Goods in transit or storage caused by the acts or omissions of third parties or of the Hirer, its representatives, employees or agents, and any related failure to deliver the Hired Goods and/or the Services; and

- (ii) to the Hirer's property that Moreton Hire has agreed to transport or store.
- (k) The Hirer may authorise Moreton Hire to arrange for the Hired Goods to be delivered to and left at the Handover Location without requiring signature for handover. The Hirer acknowledges and agrees that, to the fullest extent permitted by law, Moreton Hire disclaims all warranties and liabilities in relation to the handover of the Hired Goods and, unless otherwise required by law, will not replace the Hired Goods which are not received where the Hirer authorised the handover to be left without signature. The Hirer indemnifies Moreton Hire for the replacement of the Hired Goods.
- (l) If the Hirer wishes to collect the Hired Goods from Moreton Hire, Moreton Hire will use reasonable endeavours to make available the Order on the Handover Date and will notify the Hirer when and where the Order is ready for collection.
- (m) If the Hirer agrees to collect the Hired Goods, and the Hirer fails to take handover of the Hired Goods on the Handover Date:
 - (i) handover of the Hired Goods will be deemed to have been completed at 9.00 am on the Handover Date;
 - (ii) Moreton Hire will store the Hired Goods for 2 Business Days after the Handover Date, at the Hirer's risks and will charge the Hirer for all related costs and expenses (including handling, storage, insurance and repackaging); and
 - (iii) Moreton Hire may terminate this Contract pursuant to clause 28(a)(i) and charge a Cancellation Fee in accordance with these Conditions; and
- (n) Moreton Hire may re-hire all or part of the Hired Goods.
- (o) If Moreton Hire delivers up to and including 5% more or less than the quantity of Hired Goods specified in the Order, the Hirer is not able to reject them.

8. Handover Hired Goods and Services quality and acceptance

- (a) Moreton Hire will use reasonable commercial endeavours to ensure, but does not warrant, that any information provided by its suppliers, including in relation to the Hired Goods' and Services' descriptions on the Website, are accurate, complete, reliable, current or error-free.
- (b) The Hirer may, to the extent authorised by law, and subject to clause 8(d), reject any Hired Good and/or Service delivered to it that is materially non-compliant with the Order, provided that the Hirer gives Moreton Hire, immediately upon handover of the Hired Goods and/or Services, a detailed written notice of rejection (**Defect Notice**) of the defective Hired Good or Service that is apparent on normal visual inspection.
- (c) The Hirer is deemed to have accepted the Hired Goods and/or Services if the Hirer fails to give notice of the rejection in accordance with clause 8(b).
- (d) Moreton Hire is not liable for a Hired Good's or Service's failure to comply with the Order in any of the following events:
 - (i) the Hirer makes any further use of the Hired Good after sending a Defect Notice;
 - (ii) the defect arises because of:
 - (A) mismanagement, wrong or improper installation, use, maintenance or storage by (including Hired Goods or components broken, corroded or damaged due to improper handling by) a third party, the Hirer, its representative, employee or agent;

9. Hired Good return

- (a) In accordance with the ACL, Moreton Hire is not required to accept return of any Hired Good due to change of mind or incorrect choice. However, Moreton Hire assesses each request on a case by case scenario.
- (b) If Moreton Hire agrees to the proposed return, an Additional Charge to the Hired Goods' Price will apply. The original freight, unpacking, installation and repacking part of the Price will not be refunded.
- (c) The Hirer is not entitled to any refund of the Price if it returns the Hired Goods before the Term ends.

10. Intellectual property

- (a) The Hirer acknowledges that Intellectual Property produced by Moreton Hire or any of its consultants in connection with this Contract remains the property of Moreton Hire (or its consultants as the case may be).
- (b) The Hirer must not infringe any Intellectual Property in respect of that material.
- (c) All Intellectual Property rights in or arising out of or in connection with the Services and/or the Hired Goods (other than Intellectual Property in any materials provided by the Hirer) will be owned by Moreton Hire.
- (d) Moreton Hire's Intellectual Property may appear on the Hired Goods which the Hirer must not remove, conceal or obliterate.
- (e) The Hirer cannot claim any charges from Moreton Hire for advertising in respect of its Intellectual Property.
- (f) The Hirer acknowledges that Moreton Hire may, at any time during the Term, take photos or videos of the Hired Goods at the Event.

11. Hirer's obligations

The Hirer must at all times:

- (a) pay the Price in accordance with clause 12;
- (b) ensure that the terms of the Order and any information it provides in the Hired Goods Instructions are complete and accurate;
- (c) cooperate with Moreton Hire in all matters relating to the Services;
- (d) procure or provide Moreton Hire, its employees, agents, consultants and sub-contractors, with access to the Hirer's premises, office accommodation and other facilities as reasonably required by Moreton Hire to provide the Services;
- (e) procure or provide Moreton Hire with such information and materials as Moreton Hire may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) procure or provide Moreton Hire and its representatives with unrestricted access to the Handover Location, any land and premises for the purposes of performing its obligations and enforcing its rights under this Contract, including inspecting, repairing or seizing the Hired Goods.
- (g) indemnify Moreton Hire for any claims for damage to property or personal injury as a result of exercising Moreton Hire's rights under this Contract;
- (h) procure or provide Moreton Hire with access to water and electricity supply at the Handover Location for the purposes of installing and/or operating any of the Hired Goods and/or performing the Services;
- (i) procure or prepare the Hirer's premises for the supply of the Services;
- (j) keep the Hirer's details up-to-date including the relevant addresses and contact details;
- (k) procure or obtain and maintain all necessary licences, permissions and consents which may be required for the use of the Hired Goods before the Handover Date;
- (l) procure or comply with all applicable laws, including health and safety laws;
- (m) keep all materials, Hired Goods, documents and other property of Moreton Hire (**Supplier Materials**) at the Hirer's premises in safe custody at its own risk and expenses, maintain the Supplier Materials in good condition until returned to Moreton Hire, and not dispose of or use the Supplier Materials other than in accordance with Moreton Hire's written instructions or authorisation;
 - (i) return all Hired Goods to Moreton Hire before 5.00 pm on the last day of the Term or at any other time agreed in writing between the parties. Where Moreton Hire has agreed to collect the Hired Goods from the Hirer, the Hirer must have the Hired Goods ready for collection on the last day of the Term in accordance with the pick-up instructions. The Hired Goods must be returned clean, in good repair, properly stacked and packed, and otherwise ready for transit or storage; and
 - (ii) comply with any additional obligations as set out in the Hired Goods Instructions.
- (n) procure or ensure that the Hired Goods are not altered or repaired, except under the supervision of Moreton Hire or its representative;
- (o) have an adverse weather plan in place for any event that may be effected by weather or natural disasters;
- (p) protect all Hired Goods from weather (except where Moreton Hire clearly indicates in the Order that the Hired Goods are for outdoor use) and any items that are not useable due to weather will still incur the full Price;
- (q) cover the cost of shelter or alternate plans. Refunds will not be provided for adverse weather. Moreton Hire does not guarantee that they can accommodate substitutions of Hired Goods hired due to weather.

12. Payment

- (a) The Hirer must pay the Price as follows:
 - (i) 30% of the Total Price as a non-refundable deposit due on acceptance of the Order by Moreton Hire (**First Deposit**);
 - (ii) 40% of the Total Price due 30 days prior to the Handover Date (**Second Deposit**); and
 - (iii) 30% of the Total Price due 5 Business Days before the Handover Date (**Third Deposit**).
- (b) The Damage Waiver Fee is payable in addition to the Price, upon issuance of the final tax invoice prior to installation.
- (c) The Price for the Hired Goods:
 - (i) is the Price set out in the Order or, if no Price is quoted, the price specified in writing from time to time by Moreton Hire; and
 - (ii) is exclusive of all costs and charges of packaging and transport of the Hired Goods, which will be invoiced to the Hirer.
- (d) The charges for the Hired Goods and Services will be as specified in the Order or as otherwise specified in writing from time to time by Moreton Hire.
- (e) If any costs referred to in clause 12 are ascertainable before the Handover Date commences, the Hirer must pay the estimated costs requested by Moreton Hire before the Handover Date. This provision does not limit Moreton Hire's right to damages, compensation or indemnity under any other provision of these Conditions.
- (f) Moreton Hire reserves the right to increase the Price of the Hired Goods or Services, by giving notice to the Hirer at any time before the Handover Date, to reflect any increase in the cost of the Hired Goods or Services to Moreton Hire that is due to:
 - (i) any factor beyond the control of Moreton Hire (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, fuel, materials and other manufacturing costs);
 - (ii) any request by the Hirer to change the Handover Date, quantities or types of Hired Goods or Services ordered, or the Hired Goods Instructions; or
 - (iii) any delay caused by any instructions of the Hirer in respect of the Hired Goods or Services, or failure of the Hirer to give Moreton Hire adequate or accurate information or instructions in respect of the Hired Goods or Services.
- (g) The Hirer authorises Moreton Hire to complete any documentation for the purposes of the Hirer making payment through any electronic payment. Moreton Hire may, in addition to the Total Price, charge a credit card fee for payment by credit card. Moreton Hire reserves the right to refuse payment by credit card, including: where the Price exceeds \$2,000; where the Hirer proposes to use Diners Club or American Express; or where payment is not made at the times and in the amounts required by these Conditions. If Moreton Hire accepts payment of any portion of the Total Price by credit card under any of these circumstances, then a credit card fee equal to 1.75% (Visa/Master) or 3% (Diners/Amex) of the total payment (which is inclusive of GST) will be charged. Moreton Hire's preferred methods of payment are Electronic Funds Transfer or Direct Debit.

13. Additional Charges

The Hirer must pay to Moreton Hire in addition to the Price, all costs incurred by Moreton Hire (including labour costs) as well as all and any additional charges:

- (a) for handover of the Hired Goods, including any additional costs for handover to other than street level;
- (b) for freight, installation, dismantling, packing and pick up of the Hired Goods;
- (c) for Site induction;
- (d) for providing any service to the Hirer outside of Business Hours and Business Days – this may be subject to a minimum number of hours at Moreton Hire's sole discretion;
- (e) for design, consultancy and other similar services provided in connection with the hire of the Hired Goods or the Hirer's event;
- (f) if the Handover Location is not adequately prepared for handover and/or installation of the Hired Goods;
- (g) delays caused due to Moreton Hire and/or its representatives not allowed to access the Handover Location to perform the Services;
- (h) arising from a variation to this Contract, including without limitation: a change in the type of Hired Goods or Services required; a change in the position where the Hired Goods is to be or has been installed on the Handover Location; a change in the location of the Handover Location; or a change in the handover or pick up instructions from those first agreed;
- (i) arising from a failure of the Hirer to be in attendance at the Handover Date for handover or pick up of the Hired Goods;
- (j) in cleaning the Hired Goods where they have been returned in an unclean state;
- (k) for service calls to the Handover Location during the Term;
- (l) for Handover Location inspections in excess of 2 for any one Contract;
- (m) in enforcing any provision of this Contract against the Hirer (including legal costs); and
- (n) for any cost arising from:
 - (i) any disappearance, theft, loss or damage to the Hired Goods;
 - (ii) failure to return the Hired Goods;
 - (iii) breach of any statutory laws or regulations in connection with the use of the Hired Goods;
 - (iv) misuse, abuse, wilful or malicious acts, negligent or reckless use or overloading of the Hired Goods;
 - (v) disregard for instructions given to the Hirer by Moreton Hire in respect of the proper use of the Hired Goods or in contradiction of the manufacturer's instructions, if supplied with the Hired Goods at the time of hiring;
- (o) absence of return of the Hired Goods to Moreton Hire at the end of the Term, each an "Additional Charge".

14. Excluded Services

- (a) Unless stated otherwise in the Order, Moreton Hire is not responsible:
 - (i) for clearing and/or disposing of any building materials stripped, rubbish or debris from the Handover Location before during or at the end of the Term;
 - (ii) for setting up or removing any signage at the Site.
- (b) Any Handover Location remediation cost is excluded from the Services.

15. Cancellation

- (a) Unless Moreton Hire agrees otherwise in writing, and to the extent permitted by law, the Hirer may not cancel an Order.
- (b) Where the Hirer wishes to cancel an Order in accordance with clause 15(a), the Hirer must send a cancellation request in writing to experience@moreton.net.au (**Cancellation Request**).
- (c) For the avoidance of doubt, and in accordance with the *Competition and Consumer Act 2010* (Cth), the following circumstances **DO NOT** qualify for any Cancellation Request of any Order, placed by the Hirer:
 - (i) where the Hirer failed to read any of the Terms;
 - (ii) rain or inclement weather;
 - (iii) failure in electricity supply;
 - (iv) actions or inactions by any person or authority beyond the control of the Hirer of the premises or venue to be used for the delivery of the Hired Goods and performance of Services under this Contract;
 - (v) if the Hirer changed his/her mind after he/she placed an Order for Hired Goods and/or Services (for whatever reason);
 - (vi) if the Hired Goods and/or Services were in accordance with their description, but did not meet the Hirer's general expectations (for whatever reason); and
 - (vii) if delivery of the Hired Goods and/or Services is not possible at the Handover Date, due to the Hirer's action, inaction, omission or negligence, including but not limited to the Hirer's failure to:
 - (A) be in attendance at the Handover Date for the Hired Goods;
 - (B) provide access to the Handover Location or any other relevant site required for Moreton Hire to perform the Services;
 - (C) attend the Handover Location or any other relevant site required for performing the Services, due to a medical condition or any other personal reason;
 - (D) comply with any health and safety requirements or any other legal requirements.
- (d) Moreton Hire assesses each Cancellation Request on a case by case scenario.
- (e) Moreton Hire reserves the right at its absolute discretion, to accept or reject a Cancellation Request.
- (f) All Cancellation Requests are non-reversible once received by Moreton Hire (unless Moreton Hire agrees otherwise, in its absolute discretion).
- (g) Moreton Hire may verify the validity and veracity of some or all of the particulars of a Cancellation Request. Moreton Hire may also ask the Hirer to provide additional information in relation to the Cancellation Request.
- (h) To the extent permitted by law, and in circumstances where Moreton Hire believes that a Cancellation Request is unacceptable, incorrect, misleading, deceptive and/or is otherwise invalid, Moreton Hire may, in its absolute discretion, refuse a Cancellation Request. To the extent permitted by law, Moreton Hire is under no obligation to provide the Hirer with reasons as to why the Cancellation Request has been refused. Any fraudulent, abusive or otherwise suspicious activity or Cancellation Request will be immediately referred to the relevant authorities.
- (i) Moreton Hire's decision with respect to any Cancellation Request is final and no further correspondence will be entered into.
- (j) Without limiting the foregoing, Moreton Hire reserves the right at its absolute discretion to agree to cancel part or all of an Order outside of the above circumstances in compelling or extenuating circumstances.

- (k) Nothing in this clause is intended to limit, exclude or modify or purport to limit, exclude or modify the statutory implied guarantees/warranties that cannot be lawfully limited, excluded or modified as provided under the *Competition and Consumer Act 2010* (Cth) including the statutory consumer guarantees under the ACL or similar laws in the States and Territories of Australia.

16. Cancellation fees

- (a) Where the Hirer cancels all or part of its Order or terminates this Contract in accordance with these Conditions, the Hirer acknowledges and agrees that the cancellation fees as set out below (**Cancellation Fees**), are a reasonable and genuine reflection of the proportionate business losses incurred by Moreton Hire as a result of the cancellation.
- (b) Moreton Hire may charge Cancellation Fees in accordance with the Conditions which can be up to 100% of the Total Price as specified in the Order, regardless of whether the Term has commenced.
- (c) If the Hirer cancels the Order or terminates this Contract between the date of acceptance of the Order and more than 10 days before the Handover Date, for any reason, the Hirer will be liable to Moreton Hire for the First Deposit.
- (d) If the Hirer cancels the Order or terminates this Contract less than 10 days before the Handover Date, the Hirer will be liable to Moreton Hire for the First Deposit and the Second Deposit.
- (e) If the Hirer cancels the Order or terminates this Contract, at any time after the Handover Date, the Hirer will be liable to Moreton Hire for the First Deposit, the Second Deposit, the Third Deposit and any Additional Charge.
- (f) Subject to the ACL, where applicable, any refunds, transfers or credit of any amounts paid by the Hirer prior to termination of this Contract will be at the sole discretion of Moreton Hire.
- (g) Moreton Hire may not charge a Cancellation Fee if the Hirer cancels the Order or terminates the Contract in accordance with clause 27.

17. Refunds and Credits

- (a) Any refund related to a Cancellation Request that has been accepted in writing by Moreton Hire will be credited to the Hirer's nominated bank account, such details to be provided by the Hirer to Moreton Hire during the refund request process.
- (b) Where eligible, any credit confirmation relating to a Cancellation Request that has been accepted in writing by Moreton Hire will be issued to the Hirer's email address, such details to be provided by the Hirer to Moreton Hire during the refund request process.
- (c) Credits must be redeemed in a single transaction before the specified expiry date. The Hirer must use the full value of the credit before the specified expiry date. Any unused balance upon the specified expiry of a credit will not be refunded or credited.
- (d) If the Hirer's Order exceeds the available credit balance, the Hirer must pay the difference with another payment method. This credit is redeemable for Hired Goods or Services. It is not redeemable for cash.
- (e) Any refund (or credit, as the case may be) provided by Moreton Hire is in no way an admission of liability by or on behalf of Moreton Hire or the admission of any other fact in connection with, any act or omission which then led to the Cancellation Request being submitted by the Hirer.
- (f) For defective Hired Goods, where Moreton Hire refunds the Price of, or issues a credit relating to, the Hired Goods, such refund will constitute fulfilment of all

warranty obligations and liabilities of Moreton Hire with respect to the reported defect.

- (g) In any case, and for the avoidance of doubt, the Hirer is not entitled to any refund or credit of the Price if it returns the Hired Goods before the Term ends.

18. Moreton Hire's rights

If Moreton Hire's performance of any of its obligations under this Contract is prevented or delayed by any act or omission by the Hirer or failure by the Hirer to perform any relevant obligation (**Hirer Default**) without limiting or affecting any other right or remedy available to it:

- (a) Moreton Hire has the right to suspend performance of the Services until the Hirer remedies the Hirer Default, and to rely on the Hirer Default to relieve it from the performance of any of its obligations in each case to the extent the Hirer Default prevents or delays Moreton Hire's performance of any of its obligations;
- (b) Moreton Hire will not be liable for any costs or losses sustained or incurred by the Hirer arising directly or indirectly from Moreton Hire's failure or delay to perform any of its obligations as set out in this clause 18; and
- (c) the Hirer will reimburse Moreton Hire on written demand for any costs or losses sustained or incurred by Moreton Hire arising directly or indirectly from the Hirer Default.
- (d) Moreton Hire may apply interest on the overdue sum from the due date until payment of the overdue sum.
 - (i) Interest under clause 18 will accrue each day at 4% a year above the Reserve Bank of Australia's base rate from time to time, but at 4% a year for any period when that base rate is at or below 0%.
 - (ii) All amounts due under this Contract must be paid to Moreton Hire in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

19. Set-off

- (a) Moreton Hire is authorised to deduct any amount due and payable by the Hirer from amounts otherwise due and payable to Moreton Hire under or in connection with this Contract.
- (b) The exercise by Moreton Hire of its rights under clause 19(a) does not limit or affect any other rights or remedies available to it under this Contract or otherwise.

20. Registration on the PPSR

- (a) This Contract is a security agreement for the purposes of the PPSA. The Hirer acknowledges that it has granted Moreton Hire a security interest in the Hired Goods and their proceeds which is a purchase money security interest to the extent that it secures payment of all or part of the Price for particular Hired Goods.
- (b) The Hirer consents to Moreton Hire perfecting any security interest arising in connection with this Contract by registering a financing statement on the PPSR and any other applicable security registers in any manner it considers appropriate. The Hirer agrees to do anything Moreton Hire reasonably asks to ensure that the security interest:
 - (i) is enforceable, perfected and otherwise effective; and
 - (ii) has priority over all other security interests.
- (c) The Hirer agrees to pay or reimburse Moreton Hire for any fees or charges for the PPSR or other registrations contemplated by this clause.

21. Credit reporting

- (a) By signing this Contract, the Hirer consents to and authorises Moreton Hire to:

- (i) obtain from a credit reporting agency a credit report containing personal information about the Hirer and the Hirer's guarantors, as the case may be.
 - (ii) obtain a report from a credit reporting agency and other information in relation to the Hirer's commercial credit activities.
 - (iii) give to and obtain from any credit provider that may be named in a credit report issued by a credit reporting agency information about the Hirer's credit arrangements, which may include information about credit worthiness.
- (b) Moreton Hire agrees that, in dealing with information disclosed to Moreton Hire pursuant to clause 21(a), Moreton Hire will deal with that information in accordance with the *Privacy Act 1988* (Cth).

22. GST

- (a) Unless expressly stated otherwise, all amounts payable under this Contract are exclusive of GST and must be calculated without regard to GST.
- (b) Where any taxable supply for GST purposes is made under this Contract by Moreton Hire to the Hirer, the Hirer will, on receipt of a GST invoice from Moreton Hire, pay to Moreton Hire such additional amounts in respect of GST as are chargeable on the supply of the Services or Hired Goods at the same time as payment is due for the supply of the Services or Hired Goods.

23. Limitation of liability

- (a) Moreton Hire has obtained insurance cover in respect of its own legal liability for individual claims.
- (b) To the extent permitted by law, Moreton Hire, its officers, employees, agents, contactors or suppliers, are not liable for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Hirer has incurred and amounts the Hirer is liable to third parties (**Consequential Loss**) even if Moreton Hire, its officers, employees, agents, contactors, suppliers or any related body corporate are aware of the possibility of those Consequential Losses.
- (c) The restrictions on liability in this clause 23 apply to every liability arising under or in connection with this Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- (d) Subject to clause 23(e), the Hirer warrants that it has not relied on any representation made by Moreton Hire which has not been stated expressly in this Contract, or upon any descriptions, illustrations or specifications contained in any document produced by Moreton Hire including on the Website.
- (e) The Hirer acknowledges that to the extent Moreton Hire has made any representation which is not otherwise expressly stated in this Contract, the Hirer has been provided with an opportunity to independently verify the accuracy of that representation.
- (f) Moreton Hire's liability, whether in contract, tort, statute or otherwise, to the Hirer or any third party concerning performance or non-performance by Moreton Hire, or in any manner related to this Contract, for all claims, is limited in the aggregate to an amount equal to the relevant Service and Hired Good Price paid by the Hirer.
- (g) Nothing in this Contract is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of Moreton Hire in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

- (h) Nothing in this Contract limits or excludes Moreton Hire's liability where liability cannot be limited or excluded by applicable law.

24. Bond

If requested by Moreton Hire, the Hirer must pay (in addition to the Price) a bond equivalent to 10% of the Total Price. Moreton Hire may apply so much of the bond as is necessary to compensate Moreton Hire for any breach by the Hirer of this Contract, or any damage or loss sustained in respect of the Hired Goods. The balance if any is refundable to the Hirer after the end of the Term.

25. Insurance

The Hirer must maintain public liability insurance for a minimum of \$10 million unless otherwise stated in the Order, and property insurance for the full replacement value of the Hired Goods. For all orders with a total value exceeding \$20,000, the Hirer is required to produce a relevant certificate of currency, and have their insurance policy specifically endorsed for Moreton Hire's respective rights and interests if so requested.

26. Indemnity

The Hirer indemnifies Moreton Hire, its officers, employees and agents against all claims Moreton Hire incurs as a result of the Hirer's negligence, breach of this Contract or breach of any warranty contained in these Conditions, breach of any law, improper or absence of preparation of the Handover Location for handover or installation of the Hired Goods, Moreton Hire's entry upon the Handover Location, performance of the Services, handover, installation, inspection, use, dismantling and collection of the Hired Goods, or contact with underground pipes or wires on the Handover Location.

27. Termination by the Hirer

The Hirer may terminate this Contract with immediate effect by giving written notice to Moreton Hire if Moreton Hire commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 20 Business Days after receipt of written notice to do so.

28. Termination by Moreton Hire

- (a) Without affecting any other right or remedy available to it, Moreton Hire may terminate this Contract with immediate effect by giving written notice to the other party if:
 - (i) the Hirer does not collect the Hired Goods on Handover Date or does not allow the Hired Goods and/or Services to be delivered;
 - (ii) the Hirer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 2 Business Days after receipt of written notice to do so;
 - (iii) the Hirer is subject to or takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (iv) the Hirer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (v) the Hirer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.
- (b) Without affecting any other right or remedy available to it, Moreton Hire may terminate this Contract with immediate effect by giving written notice to the Hirer if:
 - (i) the Hirer fails to pay any amount due under this Contract on the due date for payment; or
 - (ii) there is a Change of Control of the Hirer.
- (c) Without affecting any other right or remedy available to it, Moreton Hire may suspend the supply of Services or all further deliveries of Hired Goods under this Contract or any other Contract between the Hirer and Moreton Hire if the Hirer fails to pay any amount due under this Contract on the due date for payment, the Hirer becomes subject to any of the events listed in clause 28(a), or Moreton Hire reasonably believes that the Hirer is about to become subject to any of them.

29. Consequences of termination

- (a) On termination of this Contract:
 - (i) the Hirer must immediately pay to Moreton Hire all of Moreton Hire's outstanding unpaid invoices and interest and, in respect of Services and Hired Goods supplied but for which no invoice has been submitted, Moreton Hire will submit an invoice, which is payable by the Hirer immediately on receipt; and
 - (ii) the Hirer must return all of Moreton Hire's Hired Goods and documents. If the Hirer fails to do so, then Moreton Hire may enter the Hirer's premises and take possession of them. Until they have been returned, the Hirer will be solely responsible for their safe keeping and must not use them for any purpose not connected with this Contract.
- (b) If Moreton Hire terminates this Contract pursuant to clause 28, termination will be deemed a cancellation by the Hirer for the purpose of clause 16.
- (c) If notice is given to the Hirer pursuant to clause 28, Moreton Hire may, in addition to terminating this Contract:
 - (i) apply any Cancellation Fee in accordance with clause 16;
 - (ii) retain any moneys paid;
 - (iii) be regarded as discharged from any further obligations under this Contract; and
 - (iv) pursue any additional or alternative remedies provided by law.
- (d) Termination or expiry of this Contract will not affect any rights, remedies, obligations and liabilities of Moreton Hire that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry.
- (e) Any provision of this Contract that expressly or by implication is intended to have effect after termination will remain in full force and effect.

30. Disputes

- (a) A party claiming that a dispute has arisen under, or in connection with this Contract must not commence court proceedings arising from, or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Contract must give the other party to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the

dispute in good faith. If the dispute is not resolved within a period of 10 Business Days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

31. Privacy policy

Moreton Hire's privacy policy, which is available on the Website, as amended from time to time (**Privacy Policy**) forms part of these Conditions and, by placing an Order, the Hirer acknowledges and agrees to Moreton Hire's Privacy Policy.

32. Confidentiality

- (a) Subject to clause 32(b), a party must not, without the prior written approval of the other party, disclose the confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party.
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or obligations under or in connection with this Contract. Each party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Contract, do not make public or disclose the other party's confidential information; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party will use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

33. Joint and several liability

If the Hirer is more than one person, the Hirer is jointly and severally liable under this Contract.

34. Damage Waiver Fee

- (a) The Damage Waiver Fee is payable in addition to the Price upon issuance of the final tax invoice prior to installation.
- (b) Upon payment by the Hirer of the Damage Waiver Fee the Hirer is not responsible for the cost of repairs to or the cost of replacement of the Hired Goods if necessary because of damage to the Hired Goods sustained during the Term.
- (c) Clause (b) only applies where that cost is equal to or less than \$50,000. The Hirer remains responsible for those costs to the extent that they exceed \$50,000.
- (d) The Hirer remains responsible for costs exceeding \$50,000 in aggregate.
- (e) Clause (b) will not continue to operate after the end of the Term, unless an extension of the Term by Moreton Hire is granted in writing and an additional portion of the Damage Waiver Fee is paid.
- (f) Clause (b) does not limit the Hirer's liability for failure to return the Hired Goods.
- (g) Clause (b) will not apply to, and the Hirer remains responsible for, loss or damage occurring to the Hired Goods:
 - (i) because of breach of any statutory laws or regulations in connection with the use of the Hired Goods by the Hirer;
 - (ii) because of misuse, abuse, wilful or malicious acts, negligent or reckless use or overloading of the Hired Goods;

- (iii) because of disregard for instructions given to the Hirer by Moreton Hire in respect of the proper use of the Hired Goods or in contradiction of the manufacturer's instructions if supplied with the Hired Goods at the time of hiring;
- (iv) because of the unexplained disappearance, theft, loss or damage of the Hired Goods;
- (v) while the Hired Goods is in transit, if being carried by the Hirer or an employee, contractor or agent of the Hirer.

35. Force majeure event

- (a) Moreton Hire is not in breach of this Contract or liable to the Hirer for any loss incurred by as a direct result of Moreton Hire failing or being prevented, hindered or delayed in the performance of its obligations under this Contract due to a Force Majeure Event.
- (b) If a Force Majeure Event occurs, Moreton Hire will notify the Hirer as soon as practicable of the particulars of the Force Majeure Event and the anticipated delay.
- (c) Upon providing the notice in accordance with clause 35(b), Moreton Hire will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, Moreton Hire must continue to use all reasonable endeavours to perform those obligations.
- (d) The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.
- (e) If the delay due to the Force Majeure Event continues for 5 Business Days, either party may terminate this Contract immediately on providing notice in writing to the other party.

36. Notices

- (a) Any notice, approval, request, demand or other communication (**Notice**) given to a party under or in connection with this Contract must be in writing and be:
 - (i) served personally;
 - (ii) sent by email to the email address set out in the Order; or
 - (iii) sent by ordinary or registered post – person to person mail (airmail if overseas) to the address of the party specified in this Contract (or such other address as that party notifies in writing).
- (c) Any notice will be deemed to have been received:
 - (i) if delivered by hand, at the time of handover;
 - (ii) if sent by prepaid mail, 2 Business Days after posting; or
 - (iii) sent by email, at the time of transmission (and the sender does not receive a handover failure notice), or, if this time falls outside Business Hours in the place of receipt, the next Business Day.

37. Assignment and other dealings

- (a) Moreton Hire may at any time, without the consent of the Hirer, assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract.
- (b) The Hirer must not assign, transfer, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract without the prior written consent of Moreton Hire, which may be withheld at Moreton Hire's sole discretion.

38. Severance

If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it will be deemed

deleted, but that will not affect the validity and enforceability of the rest of this Contract.

39. Waiver

A waiver of any right or remedy is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy will not waive that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.

40. No partnership or agency

Nothing in this Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

41. Entire agreement

This Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into this Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

42. Variation

Except as set out in these Conditions, no variation of this Contract will be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

43. Governing law and jurisdiction

This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract are governed by the laws of Queensland. Each party irrevocably agrees that the courts of Queensland will have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

44. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

45. Definitions

ACL: the Australian Consumer Law, as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Additional Charge: includes all and any additional charge described in clause 13.

Business Day: any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Queensland, and concludes at 5:00 pm on that day.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Cancellation Fee: has the meaning given to that term in clause 16(b).

Cancellation Request: has the meaning given to that term in clause 15(a).

Conditions: means these terms and conditions, as amended from time to time.

Consequential Loss: has the meaning given to that term in clause 23(b).

Contract: means this contract between Moreton Hire and the Hirer for the supply of Hired Goods and/or Services including the Conditions, Order(s) and Privacy Policy.

Control: has the meaning given the *Corporations Act 2001* (Cth), and the expression **Change of Control** will be interpreted accordingly.

Damage Waiver Fee: means the amount set out in the Order.

Defect Notice: has the meaning given to that term in clause 8(b).

Effective Date: means the date set out in the Order.

Event: means the event or exhibition located at the Handover Location for which the Hired Goods have been hired.

First Deposit: has the meaning given in clause 12.

Force Majeure Event: includes any of the following:

- (a) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
- (b) strikes or other industrial action outside of the control of Moreton Hire;
- (c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic;
- (d) any decision or direction by a competent authority in relation to a pandemic, including, without limitation, COVID-19, or any threat of COVID-19, beyond the reasonable control of the Affected Party;
- (e) any decision, action or omission – wilful or negligent - of third parties beyond the reasonable control of Moreton Hire; or
- (f) any of the following events in relation to a third party:
 - (i) a receiver, receiver and manager, administrator, liquidator, trustee or similar official is appointed over any of the assets or undertaking of the person;
 - (ii) the person suspends payment of its debts generally;
 - (iii) the person is or becomes unable to pay its debts when they are due or is unable to pay its debts;
 - (iv) the person enters into or resolves to enter into any arrangement, competition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (v) an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the person or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the person otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all shareholders; or
 - (vi) an administrator is appointed,

to the extent that it affects Moreton Hire's ability to perform its obligations under this Contract.

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

Handover Date: means the handover date (and time, as applicable) at the Handover Location as described in the Order.

Handover Location: has the meaning given in clause 7(c).

Hirer: means the person described in the Order.

Hirer Default: has the meaning given to that term in clause 18.

Hired Goods: the hired goods (or any part of them) supplied under this Contract as set out in the Order.

Hired Goods Instructions: any specification for the Hired Goods, including any relevant plans or drawings, use or instructions provided by Moreton Hire to the Hirer as set out in the Order.

Intellectual Property: any intellectual property rights worldwide, whether registered or unregistered including patents, copyright and neighbouring, moral right and trademarks, business names and domain names, rights in get-up, goodwill, rights in designs, rights in computer software, data base rights, rights to use, and protect the confidentiality of, and confidential information (including know-how and trade secrets).

Moreton Hire: Moreton Hire Pty Ltd (ACN 132 853 779).

Notice: has the meaning given in clause 36.

Order: the Hirer's order for the supply of Hired Goods and/or Services, as set out in the order form attached to these Conditions, in the Hirer's purchase order form, or in the

Hirer's written acceptance of Moreton Hire's quotation, as the case may be.

PPSA: the *Personal Properties Securities Act 2009* (Cth).

PPSR: has the meaning given to it in the PPSA.

Price: the Price set out in the Order.

Privacy Policy: has the meaning given to that term in clause 31.

Return Date: date (and time, as applicable) for the Hired Goods to be returned to Moreton Hire as described in the Order.

Second Deposit: has the meaning given in clause 12(a)(ii).

Services: the services supplied under this Contract as set out in the Order.

Supplier Materials: has the meaning given in clause 11(m).

Term: has the meaning given to that term in clause 2

Total Price: the total amount including the Price set out in the Order, any Additional Charge, and any applicable GST.

Third Deposit: has the meaning given to it in clause 12(a)(iii).

Website: means www.moreton.net.au.

46. Interpretation

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms including, include, in particular, for example or any similar expression will be interpreted as illustrative and will not limit the sense of the words preceding those terms.
- (e) A reference to writing or written excludes fax but not email.

Executed by Moreton Hire by its duly authorised representative who warrants to be authorised to do so:

.....
Signature of authorised representative

.....
Name of authorised representative

.....
Date

Executed by the Hirer by its duly authorised representative who warrants to be authorised to do so:

.....
Signature of authorised representative

.....
Name of authorised representative

.....
Date