

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
Personal Details: <i>(please complete if you are an Individual)</i>			
D.O.B.:		Driver's Licence No.:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
ABN:	ACN:	Date Established <i>(current owners)</i> :	
Nature of Business:			
Paid Up Capital: \$	Estimated Monthly Purchases: \$	Credit Limit Required: \$	
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No.:	Phone No.:	Mobile No.:	
(2) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No.:	Phone No.:	Mobile No.:	
Account Terms: <input type="checkbox"/> 30 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:			
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:			
Accounts Contact:		Phone No.:	
Bank and Branch:		Account No.:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>			
Name:	Address:	Phone / Fax / Email:	
1.			
2.			
3.			

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 Max Crane & Equipment Hire (SA) 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 (CLIENT): _____ **SIGNED (MAX):** _____
 Name: _____ Name: _____
 Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

Max Crane & Equipment Hire (SA) Pty Ltd - Terms and Conditions

1. **Definitions**
- 1.1 **"Contract"** means the terms and conditions contained herein, together with any Special Conditions, quotation, Purchase Order, appendix, annexure, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Max"** means Max Crane & Equipment Hire (SA) Pty Ltd (as trustee for Max Crane & Equipment Hire Trust) T/A Max Crane & Equipment Hire (SA) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Max Crane & Equipment Hire (SA) Pty Ltd (as trustee for Max Crane & Equipment Hire Trust) T/A Max Crane & Equipment Hire (SA) Pty Ltd.
- 1.3 **"Client"** means the person, entities or any person acting on behalf of and with the authority of the Client requesting Max to provide the Services as specified in any proposal, quotation, order, invoice or other document, and:
 - (a) if there is more than one reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Equipment"** means all Equipment (including any accessories, machinery, tools and associated items, manuals, log books and max vehicles as accessories such Equipment) supplied on hire by Max 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, purchase order, or any other work authorisation forms as provided by Max to the Client.
- 1.5 **"Minimum Hire Period"** means the minimum Hire Period, as specified in this Contract, and calculated at the appropriate hourly rate plus travel unless otherwise specified by Max prior to commencement of the Hire Period.
- 1.6 **"Hire Period"** means the term of the hire of the Equipment as specified in the Purchase Order and which may include weekends and/or public holidays, and continues until the expiry of the Hire Period or until the Hire Period is terminated in accordance with the terms and conditions of such Hire Period as agreed in the Purchase Order.
- 1.7 **"Hire Docket"** means the form issued by Max at the time a Purchase Order is submitted to Max and includes job details, Equipment and other details.
- 1.8 **"Purchase Order"** means any order in writing or by electronic means on behalf of the Client for the supply of Services by Max and each schedule or document accompanying such Purchase Order.
- 1.9 **"Dry Hire"** means any cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by Max for the Client.
- 1.10 **"Wet Hire"** means that the Equipment is supplied by Max with an operator (includes riggers, dogmen, supervisors, drivers and any such other employee or agent of Max, who shall at all times remain an employee or representative of Max).
- 1.11 **"Goods"** means any cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by Max for the Client.
- 1.12 **"PPSA"** means the Personal Property Securities Act 2009 (Cth) as amended from time to time.
- 1.14 **"PPSR"** means the Personal Property Securities Register established under the PPSA.
- 1.15 **"Confidential Information"** means confidential information, whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.16 **"Charges"** means the cost of the hire (plus any GST where applicable) of the Equipment as agreed between Max and the Client subject to clause 6 of this contract.
- 1.17 **"GST"** means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).
2. **Interpretation**
- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
 - (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$) is a reference to Australian currency; and
 - (e) this Contract is not to be interpreted against Max merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) Special conditions (if any); and
 - (iii) any schedule;
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.
3. **Acceptance**
- 3.1 The Services taken to have been exclusively accepted and is immediately bound, jointly and severally, by this Contract if the Client places an order for Equipment, or accepts Delivery.
- 3.2 This Contract constitutes the entire Contract between the parties and contains all the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Contract.
- 3.3 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.4 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.5 The special conditions (if any) set out by Max in any quotation, order or other document shall form part of this Contract, unless otherwise stated. In the event of any inconsistency between the special conditions and any other term of this Contract, the special conditions shall prevail to the extent of the inconsistency.
- 3.6 Both parties acknowledge and agree that this Contract does not constitute a partnership between the parties or constitute one party as agent or representative of another.
- 3.7 A waiver of the Client's obligations is ineffective unless it is in writing and is verified and signed by a duly appointed officer of the Client.
- 3.8 Time shall be of the essence in relation to this Contract.
- 3.9 The Client warrants and represents to Max that:
 - (a) this Contract constitutes legal, valid and binding obligations enforceable against the Client in accordance with its terms;
 - (b) all consents and approvals, whether governmental or otherwise, required in order for the Client to observe and perform the Client's covenants have been obtained and are in full force and effect;
 - (c) no Default Event exists and no event has occurred or is continuing to occur which constitutes or might, with the passing of time or giving of notice (or both), constitute such an event;
 - (d) to the best of the Client's knowledge, information and belief, no information supplied by the Client to Max in relation to this Contract contained any material misstatement of fact or omitted to state a material fact.
- 3.10 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer the 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 and contact phone or fax number), change of trustees or business practice. The Client shall be liable for any loss incurred by Max as a result of the Client's failure to comply with this clause.
4. **Charges and Payment**
- 4.1 The Client shall pay the Charges to Max for the duration of the Hire Period, which (at Max's sole discretion) shall be either:
 - (a) as indicated on invoices provided by Max to the Client in respect of Equipment supplied on hire;
 - (b) Max's current Charges as at the date of Delivery, according to Max's current price list rates (rates are subject to change upon written notice to the Client and shall take effect from the date of notice. In the event that the Client does not accept the revised rates, the Client has the right to terminate without prejudice upon the required notice of termination); or
 - (c) calculated on a working day of eight (8) hours per day (from 7.00am to 3.30pm, allowing a thirty (30) minute lunch break); or
 - (d) Max's quoted Charges (subject to clause 6.2), which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Max reserves the right to vary the Charges, in the event that:
 - (a) a variation to Max's quotation is requested; or
 - (b) where Max is required to mobilise and demobilise Equipment when Max is required to transport the Equipment to and from Max's depot, unless otherwise agreed; or
 - (c) where Equipment is used outside Max's standard working hours (as specified in clause 6 above) or on a weekend or public holiday. "Excess" is more than ten (10) hours per calendar day; or
 - (d) rates in respect of Max's personnel are subject to additional Charges for loading, penalties and allowances as applicable to Max personnel pursuant to their terms of engagement (including but not limited to, night shifts, weekends, standby, overtime, public holidays, meals, travel and accommodation rates); or
 - (e) the fuel levy shall be payable where the price of diesel fuel exceeds the fuel price specified in Max's price list rates.
- 4.3 Variations will be charged for on the basis of Max's quotation, and will be detailed in writing, and shown as variations on Max's invoice. The Client shall be required to respond to any variation submitted by Max within ten (10) working days. Failure to do so will entitle Max to add to the cost the amount of the variation plus the Price. Payment for all variations must be made in full at the time of their completion.
- 4.4 Max may, in its sole discretion, require the Client to pay a non-refundable deposit.
- 4.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the dates determined by Max, which may be:
 - (a) by way of instalments/progress payments in accordance with Max's payment schedule;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Max.
- 4.6 The Client shall make payment to Max on/ by each due date by cheque, bank cheque, electronic/in-line banking, credit card (plus a surcharge per transaction may apply), or by any other method as agreed to between the Client and Max.
- 4.7 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to Max an amount equal to any GST Max must pay for any supply of Equipment or Services or any other agreement. The Client must pay GST, without deduction or set off of any other amount, on 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 (including stamp duty, import duties, bonds or any other charges which may be levied upon this Contract and/or the use of the Equipment or Delivery) that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 4.8 Where the Client is not responsible for 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 Max's rights and ownership in relation to the Equipment, and this Contract, shall continue.
- 4.9 Charges shall not be subject to any set-off or deduction for any reason whatsoever (including for any sums owed or claimed to be owed to the Client by Max) and, without limitation, the Client shall be liable to pay to Max:
 - (a) by reason of non-working time however caused, downtime due to normal wear and tear (excepting if the Equipment is maintained as per manufacturer's specification) during the Hire Period or any extension thereof, nor shall the Client be relieved from their responsibility to pay the Charges for the entire Hire Period by reason of the fact that the Equipment is damaged or destroyed during the Hire Period;
 - (b) the Client shall not be entitled to withhold payment of any invoice because part of that invoice is in dispute. In the event the Client disputes any part (or all) of any invoice, such dispute must be detailed in writing and given to Max within seven (7) days of the date of the invoice. If the Client shall fail to comply with this provision, any non-payment of an invoice (in whole or in part) shall entitle Max to (at their sole discretion) place the Client's account into default.
5. **Hire Period**
- 5.1 The Hire Period shall commence, and Charges shall be paid by the Client to Max, from the time the Equipment departs from Max's premises and will continue until (whichever last occurs):
 - (a) the termination of the Hire Period; or
 - (b) the return of the Equipment to Max's premises in good operating condition, reasonable wear and tear accepted; or
 - (c) the date which the Equipment is available for Recovery by Max, as notified by the Client (if such Recovery is agreed to by Max), provided the Equipment is recovered in the operating condition, reasonable wear and tear accepted; or
 - (d) the expiry of the Minimum Hire Period.
- 5.2 Notwithstanding clause 7.1, the Client shall provide a minimum of one (1) week's notice to Max of their intention to return the Equipment, and the date of expiry or cessation of this Contract shall in all cases be treated as a full day's Hire.
- 5.3 Notwithstanding anything contained in this Contract to the contrary, Max reserves the right to accept or refuse to accept any equipment for hire and without notice to the Client when, in Max's opinion, the Equipment is endangered or imperilled by any reason or cause whatsoever. The Client indemnifies Max in respect of any loss arising from any act done or by virtue of this clause 7.3. Any action taken by either Max or the Client as set forth herein shall be without prejudice to any other rights or remedies that Max or Client may have respectively.
6. **Extension of the Hire Period**
- 6.1 Prior to the expiry of the Hire Period, the Client agrees to give fair and reasonable written notice to Max requesting an extension of the Hire Period, such extension is, if any, subject to Max's agreement, the availability of the Equipment and the following conditions:
 - (a) the Charges and all other payments under this Contract having been received by Max in full as at the expiry of the Hire Period;
 - (b) there is no breach of the Client's covenants, the Hire Period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the Hire Period and at the Charges, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.
7. **Delivery and Recovery**
- 7.1 As agreed by Max and at Max's sole discretion:
 - (a) delivery of the Equipment ("Delivery") shall take place when the Client takes possession of the Equipment at either Max's premises or the Site;
 - (b) recovery of the Equipment ("Recovery") will be completed when the Equipment has been either collected from the Site and/or returned to Max's premises.
- 7.2 Unless otherwise specified:
 - (a) the costs of Delivery and Recovery, including the supply of additional labour, equipment, materials and transportation expenses and other requirements are in addition to the Charges;
 - (b) the Client is responsible for the supply of all necessary cranes, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Site.
- 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, Max shall be entitled to charge an additional cost (including but not limited to, the cost of 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 Max to the Client is an estimate only. The Client must still accept Delivery even if late and Max will not be liable for any loss or damage incurred by the Client as a result of any delay in Delivery and/or Recovery of the Equipment, commencement of work or completion of work due to reasons beyond the practical control of Max (including, but not limited to, any event outlined in clause 27.1, breakdown of plant, transport delays, accidents, or other labour difficulties, etc.).
8. **Insurance**
- 8.1 The Client accepts full responsibility for the safekeeping of the Equipment and must effect insurance (as maintained in respect of an insurer acceptable to Max) in the name of Max and the Client for their respective rights and interests whilst the Equipment is at the Site, or in transit between the Site and Max's premises in respect of the following:
 - (a) the full replacement value of the Equipment against risk as Max may nominate, or in the absence of such nomination, against loss or damage by theft, fire, accident and sabotage or other risks as determined by an insurer acceptable to Max;
 - (b) a policy of employer's indemnity insurance and works compensation insurance in respect of all employees of the Client in respect of damage or loss caused by the use, maintenance, repair and storage of the Equipment;
 - (c) public risk liability and product defect liability; and any other such insurance in support of the indemnities contained in this Contract, and must in respect of any policy of insurance, deliver to Max a copy of the policy and promptly pay all premiums and stamp duty payable in respect of the policy.
- 8.2 Both Max and the Client are entitled to receive payments of money under that insurance policy affected pursuant to clause 10.1 according to its interest in the policy. Each party agrees to assist and cooperate with the other in making, pursuing and settling any claim made under the policy.
- 8.3 Without limiting the generality of sub-clause 18.2(g), and if Max requests, the Client will expend all money received by it under the policy in respect of damage to the Equipment to repair or replace the damaged or destroyed parts of the Equipment in accordance with this Contract, subject to reasonable wear and tear, and if such money is insufficient, the Client will make good the deficiency at their own cost.
9. **Risk**
- 9.1 The Client shall assume all risks and liabilities for and in respect of the Equipment and for injury to or death of persons and damage to property however arising from the possession, use, maintenance, repair or storage of the Equipment.
- 9.2 The Client shall be solely responsible for any loss or damage to the Equipment, including (without limiting the generality of the foregoing) damage done by corrosion, rust, oxidation, and chemical reactions of every nature and kind whatsoever.
- 9.3 The Client acknowledges and agrees that:
 - (a) the Client is responsible for the condition and suitability of the Equipment, and its fitness for the Client's purposes;
 - (b) the Client has, prior to signing this Contract, examined the Equipment and satisfied themselves as to its compliance with the specifications and validity of the warranties of the manufacturer or supplier;
 - (c) the Client is satisfied with the condition and suitability of the Equipment, the Client must sign Max's pre-hire check sheet.
- 9.4 The Client shall disclose to Max the nature of the Goods to be handled, lifted and/or carried. If Max deems the Goods are, or may become dangerous or offensive, Max may do anything it believes to be appropriate to avoid or minimise any loss, damage or offence.
- 9.5 Max is not a Contract Carrier and will accept no liability as such. Accordingly, Max reserves the right to refuse to lift or move any particular item(s) at its sole discretion.
- 9.6 Unless otherwise agreed to in writing between the parties, Max shall not be deemed the principal 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, compliance under any relevant legislation or policy, etc.).
10. **Title**
- 10.1 The Equipment is and will at all times remain the absolute property of Max, and the Client must return the Equipment to Max upon request to do so.
- 10.2 The Client must not, and must not attempt to, assign, mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, license or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien or other encumbrance over, the Equipment or any part thereof, or any of the rights of the Client to the Equipment, or any of the rights of the Client under this Contract, and must keep the Equipment free from any distress, execution or other legal process.
- 10.3 Nothing contained in this Contract renders on the Client any right or property or interest in the Equipment other than as a hirer.
- 10.4 The Client must notify all persons who come in contact with the Equipment, including those who are authorised to use the Services being undertaken, of the existence on the restriction on the creation of liens, or similar interests, whether by way of pledge or otherwise, in or over the Equipment, and will notify any persons seizing the Equipment or any part thereof of the restrictions contained in this clause 12.
13. **Condition of Equipment and Inspections**
- 13.1 The Equipment will be inspected by a representative of each party to establish the general condition thereof and a statement of condition of the Equipment will be prepared:
 - (a) immediately prior to the commencement of this Contract; and
 - (b) as soon as practicable following termination of this Contract.
- 13.2 The Client acknowledges and agrees that they will, at their own cost, reinstate the Equipment to its condition as specified in the pre-hire inspection, normal wear and tear excepted.
14. **Compliance with Laws**
- 14.1 The Client and Max shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any SafeWork SA laws relating to building/construction sites and any other relevant government standards or legislation, particularly those in relation to asbestos and/or other hazardous materials (and the safe removal and disposal of the same). The Client agrees to indemnify Max against all claims arising from health issues related to exposure to asbestos on site.
- 14.2 The Client shall obtain (at the expense of the Client) all licenses and approvals or notices (including local Government approvals) that may be required in relation to use or transport of the hire Equipment.
15. **Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon entering into 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 Max for services – that has previously been supplied and that will be supplied in the future by Max to the Client.
- 15.3 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 Max 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 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Max 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 Max;
 - (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 Max.
- 15.4 Max and the Client agree that sections 96 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Max, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by Max under clauses 15.3 to 15.5. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15.9 Only the two (2) year hire period of the Equipment exceeds a two (2) year hire period, shall this clause 15 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 15 will apply generally for the purposes of the PPSA.
16. **Security and Charge**
- 16.1 In the event of the Client 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).
- 16.2 The Client indemnifies Max from and against all Max's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Max's rights under this clause.
- 16.3 The Client irrevocably appoints Max and each director of Max as the Client's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
17. **Wet Hire**
- 17.1 The Client shall:
 - (a) be responsible for:
 - (i) ensuring Max has clear and free access and egress to the Site;
 - (ii) ensuring that the ground (and paths) at the Site is firm and stable, with adequate drainage to support the Equipment under its wheels, tracks or outriggers, including ensuring any footprints, 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 Max of the location of any underground services on Site; and
 - (viii) ensuring that no other party ever attempts to use or operate the Equipment without the expressed written consent from Max;
 - (b) provide all trained and first aid services to Max'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 Client's equipment and the equipment of the Client, including:
 - (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;
 - (e) Max shall be entitled to rely on such declared weight when arranging for the transport of the Goods;
 - (f) the Client shall be responsible for all extra cost and risk incurred by Max, and for any and all damage sustained, by reliance on the declared weight if the weight declared is found to be incorrect.
- 17.2 **Max shall:**
 - (a) be responsible for ensuring their employees, contractors and persons working under its direction or control shall:
 - (i) take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Equipment;
 - (ii) maintain daily maintenance and servicing of the Equipment in accordance with Max's OEM pre-stated checks; clean, maintain, lubricate and fuel the Equipment to the standard and level specified in the manual or as otherwise specified by Max and record such checks in the log book provided;
 - (iii) be qualified and trained persons who will operate the Equipment and that they possess current licences to operate the Equipment, vehicle orientation and familiarity;
 - (iv) wear suitable protective and high visibility clothing when working with on or around the Equipment;
 - (v) operate the Equipment to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all relevant laws;
 - (vi) be fit for duty and not under the influence of drugs or alcohol;
 - (b) Max reserves the right not to enter the Site if Max believes it unsafe, and the Client shall remain liable for the charges payable to Max if the Site is not safe;
- 17.4 Notwithstanding that the operator of the Equipment is an employee or representative of Max, 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.
- 17.5 In the event the Client requires an employee of Max to undertake a recognised safety course, the Client shall be responsible for the cost of the course. 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 Hire Period then the Client shall be liable to pay Max's standard (and/or overtime, if applicable) hourly labour rate.
18. **Dry Hire**
- 18.1 If the Client requires the Equipment to be delivered, installed and/or recovered from the Site, then the Client shall notify Max 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.
- 18.2 The Client shall:

Max Crane & Equipment Hire (SA) Pty Ltd - Terms and Conditions

- (a) prior to first use, the commencement of each new activity and any daily pre-starts thereafter, the Client must inspect and walk around the site and the Equipment, complete Max/OEM pre-start checks, review OEM operating manuals, review safety alerts and inspection reports and take such other steps required to determine the suitability of the Equipment to undertake the proposed task and identify any foreseeable hazards or risks of harm in respect of the planned use of the and implement appropriate controls to minimise or where possible, to eliminate the risks in accordance with all relevant safety laws;
- (b) at their own expense, keep and maintain the Equipment in proper working order and good and substantial repair (including, but not limited to, lubricating, refuelling, daily servicing, servicing as required by Max, running repairs, marking mechanical, structural and electrical repairs, and where necessary replacing tyres and other wearing parts);
- (c) use qualified mechanics and crane technicians to undertake any servicing of the Equipment;
- (d) maintain all records of servicing and inspections and provide copies of this documentation to Max via electronic transfer each month;
- (e) in operating the Equipment, employ only persons who are properly trained and competent, and certified by Safe Work SA or relevant state authority, or any successor organisation if applicable, and holders of an appropriate driver's license and use recognised standards efficiently for the purpose for which the Equipment was intended at the date of acquisition by Max and that any safety related signs, banners, flags or warnings supplied by Max in relation to the Equipment are prominently displayed;
- (f) complete and provide documentary evidence of lift studies and job task analysis and any other such safety and operating documentation in relation to the work being undertaken with the Equipment;
- (g) operate, maintain and store the Equipment with due care and diligence, and in compliance with the instructions and recommendations of the supplier and manufacturer of the Equipment as to their operation, maintenance and storage, or in accordance with any other instructions of Max;
- (h) ensure that their operators are fit for duty and not under the influence of drugs or alcohol prior to use of the Equipment supplied by Max;
- (i) comply with all relevant laws, regulations, rules and by-laws governing or relating to the registration or licensing of the Equipment, and to its use and operation;
- (j) ensure the Equipment is delivered, to satisfy itself as to the condition, specifications, quality and fitness of the Equipment for its intended purpose;
- (k) notify Max of any accident resulting in the injury to persons or damage to property (including damage to the Equipment) involving the Equipment within twenty-four (24) hours if the date of the accident. The Client is not absolved from the requirements to safeguard the Equipment or its use, notwithstanding the above;
- (l) secure the Equipment when not in use and to ensure that all reasonable measures are taken to protect the Equipment;
- (m) provide Max free access at all times to the Equipment to examine and/or test the same (at the discretion of Max), following reasonable notice to the Client.
- 18.3 The Client shall not:
- (a) without the prior consent of Max, make any alterations, additions or replacements to the Equipment. Anything the Client wants to undertake to the Equipment that falls outside the scope of work as detailed in this Contract, the Client must seek approval in writing from Max;
- (b) do or cause or carry out any act, matter or thing which is likely to endanger the safety or condition of the Equipment;
- (c) remove the Equipment from the State of South Australia (or approved State) without the prior written consent of Max;
- (d) exceed the recommended or legal load and capacity limits of the Equipment;
- (e) use or carry any illegal, prohibited or dangerous substance in, on, the Equipment;
- (f) fit any equipment or accessories to the Equipment that is not a permanent fixture;
- 18.4 The Client indemnifies Max against, and shall pay Max immediately on demand, all costs relating to:
- (a) the servicing and/or repair of the Equipment, if found to be required by Max on Recovery (including where it is found that scheduled servicing has not been performed or there is no evidence of completion of such), and the Client shall:
- (i) be charged (in addition to the Charges) for each and every service not completed, and any repairs deemed necessary as a consequence, at Max's current technician charge out rate (available upon request) and the cost of parts/lubricants, freight, plus twenty percent (20%);
- (ii) continue to pay the Charges at the specified rate until the Equipment is returned to good operating condition;
- (b) cleaning the Equipment should it be returned in an un-cleaned state; and/or parking, toll charges or traffic infringement and will supply relevant details as required by the Police and/or Max relating to any such parking or traffic infringement and offences, impoundment, towage and storage; and
- (c) any costs incurred by Max in connection with the Client.
- 18.5 Notwithstanding Max's retention of title in the Equipment, all risk for the Equipment passes to the Client on Delivery.
- 18.6 The Client is not authorised to pledge Max's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs.
- 18.7 In the event of an accident, 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 agents);
- (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 any other causes;
- (e) damage caused by the ordinary use of the Equipment.
19. **Carriage of Goods**
- 19.1 The Client warrants that when Goods are given to Max 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 Contract and is bound by its terms and conditions.
- 19.2 The Client hereby authorises any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Max be deemed reasonable or necessary in the circumstances.
- 19.3 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, Max 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.
- 19.4 Max holds a lien over the Goods, and any related documents in Max's possession, as security for all sums payable to Max by the Client. Max may sell the Goods without giving the Client notice where the Client is in default of payment. In any instance Max shall be entitled to offset against the money recovered any money owed to by the Client.
- 19.5 The Client must comply with all legal requirements (and any requirements of the person(s) to whom Max delivers the Goods) in relation to the Goods, including requirements relating to their shape, packaging, labelling and transportation.
- 19.6 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.
- 19.7 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.
20. **Load Measuring Devices**
- 20.1 If any crane has been fitted with a load measuring device, the Client hereby acknowledges and agrees that Max has made no warranties or representations whatsoever with respect to the ability of said load measuring device to accurately or consistently measure the weight of the load being lifted by such crane. The Client further acknowledges and agrees that it is the responsibility of the Client to determine the weight of every load to be lifted by any crane comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such crane's capacity chart and that the load measuring device shall be used as an operator-aid only.
- 20.2 The Client will be liable for, and shall indemnify and hold harmless Max and of from, any and all liabilities, charges, damages, legal fees and disbursements (including those on a solicitor and own client basis with right of full indemnity) fines, penalties, expenses, actions, suits, proceedings and demands, all of whatever kind or nature which Max may suffer or incur or be liable for, either directly or indirectly, by reason of failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of Max directly or indirectly related thereto. Without restricting the generality of the foregoing, the Client covenants and agrees that they shall not sue Max for any such losses, or costs, damages, claims or demands. Furthermore, the Client acknowledges and agrees that if they rely in any way whatsoever on any such load measuring device that they do so completely at their own risk.
21. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 21.1 All conditions, warranties or promises made by Max in relation to the Equipment, as to the condition, suitability, quality, fitness for any purpose or safety of or title to the Equipment are hereby negative and excluded to the full extent permitted by the law, and Max gives no such warranty or condition, and the Client acknowledges that Max has not given any such warranty or condition.
- 21.2 The terms of this Contract, or any limitation or limit Max's liability shall apply only to the extent permitted by law, and subject to the provisions of the Competition and Consumer Act 2010 and other statutes from time to time in force which cannot be excluded, restricted or modified, or which can only be excluded, restricted or modified to a limited extent, and if any such statutes apply to this Contract, then to the extent to which Max is entitled to do so, Max's liability under such statutes shall be limited to Max's absolute option to:
- (a) the replacement of the Equipment or the supply of plant similar to the Equipment; or
- (b) the payment of the cost of having the Equipment repaired; or
- (c) the repair of the Equipment; and
- (d) His Charges will be suspended in full until the Equipment is replaced (at Max's discretion) or returned to operating condition.
- 21.3 Notwithstanding anything to the contrary contained in the CCA, Max 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 Max's written approval to do so;
- (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 Max; or
- (f) fair wear and tear, any accident, or act of God.
22. **Limitation of Liability**
- 22.1 Subject to clause 21:
- (a) Max 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 Max, or arising out of a breach by Max of these terms and conditions. Alternatively, Max's liability shall be limited to damages which under no circumstances shall exceed the Charges;
- (b) The Client acknowledges and agrees that Max is not liable:
- (i) to the Client for any loss, cost (whether indirect or consequential) or damage or delay through breakdown, mechanical defect or accident to or of the Equipment;
- (ii) to any person for any loss or damage to any property stored on the Equipment or damaged or otherwise lost during the Hire Period or left in the Equipment after return of the Equipment to Max;
- (iii) to the Client for any form of breakdown, whether mechanical electrical or structural to the Equipment whilst on hire to the Client.
- 22.2 The Client covenants and agrees that:
- (a) the Client must not do, or omit to do, any act or thing which might in any way invalidate or prejudice any insurance effected by Max or Client in respect of the Equipment;
- (b) notwithstanding whether Max or Client has effected insurance in respect of the risks, the Client indemnifies and will keep indemnified Max against:
- (i) the loss or damage to the Equipment whether by fire, theft, accident, seizure, confiscation or otherwise;
- (ii) the appraisal of such loss or damage shall be based upon the replacement value of new plant;
- (iii) all other losses, damages, claims, penalties, liabilities and expenses, including legal costs, however arising incurred as a result of or in connection with the Equipment or the seizure or the taking of possession of the Equipment by Max.
- 22.3 The Client assumes the liability for any indirect or consequential loss or damage to the Client and employees and against all claims, costs, damages, losses or expenses of any kind whatsoever, arising under tort (including but not limited, negligence), contract, strict liability, statute or otherwise from the arrangements between the Client and Max and including (without limitation) in relation to death or injury to any person, loss, damage or destruction of any property including the Equipment and goods in transit. This indemnity shall not include the cost of the Equipment.
- 22.4 To the full extent permitted by law, the Client releases, holds harmless and discharges Max, its agents and employees in respect of all claims and demands on Max and any loss or damage caused to the Client or its agents.
23. **Default and Consequences of Default**
- 23.1 An event that is a "Default Event" occurs if:
- (a) any money payable under this Contract is not paid before or on the due date for payment;
- (b) the Client fails to observe and perform any of the Client's covenants, other than the failure to pay money, and such failure continues for more than three (3) days after Max and given the Client a written notice to remedy the breach;
- (c) Max ascertains that any warranty, representation or statement made by the Client under or in connection with this Contract has been false in any material respect;
- (d) the Client, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
- (e) a receiver or an agent in possession for a mortgagee is appointed in respect of any property of the Client;
- (f) a mortgagee takes possession of any property of the Client;
- (g) any execution or similar process is made against the property of the Client;
- (h) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Client to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
- (i) a compromise or arrangement is made between the Client and its creditors;
- (j) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Client to be placed under official management;
- (k) the Client admits in writing its inability to pay its debts;
- (l) a court orders the Client to a court for an ordering summoning a meeting of any class or creditors of the Client;
- (m) an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Client under the Corporations Act or any similar process; or
- (n) an investigation is commenced under Section 13 of the Australian Securities Commission Act to investigate the affairs of the Client.
- 23.2 On the occurrence of a Default Event:
- (a) Max may:
- (i) take possession of the Equipment with or without notice to the Client, and the Client must (at the Client's expense) immediately on demand, deliver up the Equipment to Max and the Client shall remain in possession of the Equipment, and in default of the Client irrevocably authorises Max to enter any premises occupied or controlled or believed by Max to be occupied or controlled by the Client and repossess the Equipment, and for such purposes break open any gate or lock and dismantle the Equipment from any part of the premises to which they may be able to gain access, and the Client shall be in respect of any loss arising from any act done under or by virtue of this clause;
- (ii) charge interest on overdue invoices, which 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 Max's sole discretion such interest shall compound monthly) until such a time after the date of such judgment;
- (b) if the Client owes Max any money, the Client shall indemnify Max from and against all costs and disbursements incurred by Max in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Max's contract default fee, and bank dishonour fees);
- (c) further to any other rights or remedies Max may have under this Contract, if the Client has made payment to Max and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Max under this clause 23 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract;
- (d) without prejudice to Max's other remedies at law, Max 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 Max may have and all amounts owing to Max shall, whether or not due for payment, become immediately payable.
- 23.3 The Client must pay to Max on demand all money which Max pays or is liable to pay to make good any liability or cancellation (including, but not limited to, any loss of profits), and all other costs and expenses including legal costs and expenses that Max may incur in the enforcement or protection or attempted enforcement protection of Max's rights under this Contract, or in the Equipment, including money paid by Max in releasing any lien or other encumbrance claimed on the Equipment, and in dismantling and removing the Equipment from any premises.
24. **Contract Termination**
- 24.1 Max may terminate this Contract, or cancel Delivery, at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice Max shall repay to the Client any sums paid in respect of the Charges. Max shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 24.2 In the event that the Client terminates this Contract, or otherwise cancels Delivery, the Client:
- (a) must provide notice of such to Max at least twenty-four (24) hours prior to the specified date of Delivery; and
- (b) the Client shall be liable for any and all loss incurred (whether direct or indirect) by Max as a result of the cancellation (including, but not limited to, any loss of profits).
- 24.3 Except so far as clause 24.1 applies, on termination Max shall be entitled to:
- (a) retain all monies paid to it under this Contract; and
- (b) recover from the Client any other monies due and owing under this Contract as at the date of termination.
- 24.4 On termination, the Client must deliver up to Max the Equipment (together with all parts and accessories) in clean and good order as delivered (with allowance for fair wear and tear).
- 24.5 Upon termination of this Contract following the occurrence of a Default Event, the Client must pay to Max by way of liquidated damages, in addition to and without prejudice to any other right or remedy of Max, an amount equal to the total of:
- (a) the unpaid balance of the Charges for the Hire Period which would have been payable until the expiration of the Hire Period had the Contract not been terminated;
- (b) Max's costs and expenses incurred in repossessing and storing, insuring and registering the Equipment and in entering on and removing the Equipment from land or premises on which the Equipment was situated, and make good any injury or damage caused to the land or premises;
- (c) Max's costs and expenses of repairs reasonably necessary to bring the Equipment to an operational/usable condition;
- (d) interest calculated in accordance with clause 23.2(a)(ii) of this Contract.
- 24.6 On, or before, termination of this Contract, the Client shall return the Equipment to Max's premises and the Client acknowledges and agrees that the Charges are payable:
- (a) if the Client returns the Equipment to Max's premises and returned to its condition as specified in the on-hire inspection, normal wear and tear excepted; and
- (b) for the entirety of the Hire Period, notwithstanding that the Equipment may be returned to Max prior to termination.
25. **Privacy Policy**
- 25.1 Personal, documents, images or other recorded information held or used by Max in Personal Information, as defined and referred to in clause 25.3, and therefore considered Confidential Information, Max acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA") under applicable laws including the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). Max acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Max that may result in serious harm to the Client, Max will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law. Notwithstanding clause 25.1, privacy limitations will extend to Max in respect of Cookies where transactions for purchases/orders transpire directly from Max's website. Max agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage; and
- (c) reports are available to Max when Max sends an email to the Client, so Max may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Max's website.
- 25.3 The Client agrees for Max to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details) next of kin and other contact information (where applicable), previous credit applications, credit ratings about the Client in relation to credit provided by Max.
- 25.4 The Client agrees that Max 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 (2) years.
- 25.5 The Client consents to Max being given a consumer credit report to collect overdue payment on commercial credit.
- 25.6 The Client agrees that personal credit information provided may be used and retained by Max for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services/Equipment; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/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 Goods/Equipment.
- 25.7 Max 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.
- 25.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 25.3 above;
- (b) name of the credit provider and that Max 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 amounts in relation to the provision of Goods/Equipment; and/or
- (g) request of payment has been made and a direct recovery action commenced or alternatively that the Client no longer has any overdue accounts and Max has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (h) information that, in the opinion of Max, the Client has committed a serious credit infringement;
- (i) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.9 The Client shall have the right to request (by e-mail) from Max:
- (a) a copy of the Personal Information about the Client retained by Max and the right to request that Max correct any incorrect Personal Information; and
- (b) that Max does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 25.10 Max 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 Contract or is otherwise mandated or required by law.
- 25.11 The Client can make a privacy complaint by contacting Max via e-mail. Max 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.
26. **Confidentiality**
- 26.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 26.2 The quotation, hire agreement or any other information provided by Max to the Client does not constitute a contract and the Client agrees not to reproduce, copy, disseminate or provide said information in any manner to any third party without the prior written approval of Max.
27. **Force Majeure**
- 27.1 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, or any event beyond the control of either party, or regulatory conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party ("Force Majeure").
- 27.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this Contract:
- (a) The party must give the other party prompt written notice of:
- (i) the detailed particulars of the Force Majeure;
- (ii) so far as is known, the probably extent of the party will be unable to perform or will be delayed in performing the duty or obligation;
- (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
- (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible; and
- (d) shall be entitled (at its option) to terminate this Contract or extend the time for performance without penalty, if the Force Majeure event continues for a period in excess of fourteen (14) business days.
28. **Severance of Notices**
- 28.1 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.
- 28.2 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.
29. **Trusts**
- 29.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of a trust ("Trust") then whether or not Max may have notice of the Trust, the Client covenants with Max 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 Max (Max 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 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.
30. **General**
- 30.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which Max has its principal place of business, and are subject to the jurisdiction of the Port Augusta Court in that state.
- 30.3 The Client agrees to assist and cooperate with Max in relation to Max exercising any and all of their rights in respect of the Equipment, including without limitation to, Max instituting, carrying out or enforcing any legal proceedings which Max thinks desirable to protect their rights in respect of the Equipment.
- 30.4 Max may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 30.5 The Client cannot licence or assign without the written approval of Max.
- 30.6 Max may enter into subcontract out any part of the Services but shall not be relieved from any liability obligations under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Max's subcontractors without the authority of Max.
- 30.7 The Client agrees that Max may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to be accepted by the Client in relation to any contract entered into after such time as the Client makes a further request for Max to provide Services/Equipment to the Client.
- 30.8 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.