
Elemental Plumbing & Gas – Terms & Conditions of Trade

1. Definitions

- 1.1 “EPG” means Elemental Plumbing and Gas Pty Ltd (ACN 166 753 724) ATF T & A Crook Family Trust/T/A Elemental Plumbing & Gas, its successors and assigns or any person acting on behalf of and with the authority of Elemental Plumbing and Gas Pty Ltd ATF T & A Crook Family Trust T/A Elemental Plumbing & Gas.
- 1.2 “Client” means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by EPG to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by EPG to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by EPG to the Client.
- 1.5 “Price” means the Price payable for the Goods and/or Equipment hire as agreed between EPG and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with EPG’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and EPG.
- 2.3 The Client acknowledges that these terms and conditions are meant to be read in conjunction with the terms and conditions supplied by a utilities operator in relation to the installation of a Small Embedded Generator (SEG) (where an SEG is supplied as part of, or in conjunction with, any works provided under this agreement). Under those terms and conditions the Client is required (to ensure the SEG remains safe and functional) to regularly have the SEG inspected and maintained as specified in those terms and conditions. Whilst inspection and/or maintenance of the SEG is the Client’s sole responsibility to arrange, EPG can provide such services at its usual rates if requested.
- 2.4 EPG will notify the Client’s electricity distributor/retailer of the installation. The electricity distributor/retailer may then require the replacement of the Client’s existing power meter the cost of which shall be the Client’s responsibility and is not included in any pricing specified under this agreement.
- 2.5 Where the Client is a tenant (and therefore not the owner of the land and premises where Goods are to be installed) then the Client warrants that the Client has obtained the full consent of the owner for EPG to install the Goods on the owners land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Services provided under this agreement and to indemnify EPG against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Goods and the provision of any related Services by EPG except where such claim has arisen because of the negligence of EPG when installing the Goods.
- 2.6 The Client agrees that they shall upon request from EPG provide evidence that:
 - (a) they are the owner of the land and premises upon which the Services are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Goods to be installed on the land and premises upon which the Services are to be undertaken.
- 2.7 None of EPG’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of EPG in writing nor is EPG bound by any such unauthorised statements.

3. Electronic Transactions Act 2003

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give EPG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by EPG as a result of the Client’s failure to comply with this clause.

5. Exclusions to Quotations

- 5.1 The following shall apply to quotations unless otherwise mentioned:
 - (a) any materials and services not listed in the quotation;
 - (b) any other electrical work;
 - (c) any other concreting works;
 - (d) any variation in excavation costs due to hard ground conditions, obstructions, dewatering, latent soil conditions, etc.;
 - (e) subject to clause 6.2, any other variations that which become apparent once commencement of the Services has begun.

6. Price and Payment

- 6.1 At EPG’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by EPG to the Client; or
 - (b) EPG’s quoted price (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.
- 6.2 EPG reserves the right to change the Price:
 - (a) in the event of a variation to EPG’s quotation (including, but not limited to, variations as a result of changes to quantities or the specifications contained in any order and/or Electrical, Plumbing and/or Gas Inspections), or
 - (b) where due to changes in taxes and duties (including GST, excise or stamp duties), fluctuation in exchange rates, insurance or freight costs, or increases in the cost to EPG of labour and materials; or

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- (c) where the value of any Renewable Energy Certificate's (REC's) and/or Smallscale Technology Certificates (STC's) upon which the sale Price is dependant, changes as REC's and/or STC's are traded on the open market and the price varies from time to time; or
 - (d) where there is any change to any monies available to the Client from the Australian Federal Government's Renewable Energy Target Program (RET Program), (if applicable) or any other Commonwealth, State or Local Government rebates or incentives; or
 - (e) where additional Services is required due to unforeseen circumstances (including, but not limited to, limitations to accessing the site, prerequisite work by any third party not being completed, safety considerations etc.) which are only discovered on commencement of the Services; or
 - (f) in the event EPG incurs additional costs enforced by energy bodies if the import export meter cannot be installed, this includes but is not limited to, asbestos metre boards, such costs will be passed on to the Client, due to such an unforeseen circumstances which are only revealed once EPG has commenced installation of the Goods.
- 6.3 At EPG's sole discretion a deposit of up to forty percent (40%) of the Price may be required.
- 6.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by EPG, which may be:
- (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) by way of instalments/progress payments in accordance with EPG's payment schedule;
 - (d) for certain approved Client's, thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EPG.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Client and EPG.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to EPG an amount equal to any GST EPG must pay for any supply by EPG under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Delivery**
- 7.1 Subject to clause 7.2 it is EPG's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that EPG claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond EPG's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify the Seller that the site is ready or
 - (d) inclement weather.
- 7.3 At EPG's sole discretion the cost of delivery is included in the Price.
- 7.4 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then EPG shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 7.5 EPG may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time or date given by EPG to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and EPG will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 8. Risk**
- 8.1 If EPG retains ownership of the Goods under clause 15 then:
- (a) where EPG is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Goods at EPG's address; or
 - (ii) the Goods are delivered by EPG or EPG's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where EPG is to both supply and install Goods then EPG shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Buyer.
- 8.2 EPG shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, EPG accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.3 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where EPG is requested to merely clear such blockages, EPG can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, EPG will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 8.4 The Client acknowledges and agree that where EPG has performed temporary repairs that:
- (a) EPG offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) EPG will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 8.5 The Client acknowledges that EPG is only responsible for parts that are replaced by EPG and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure,

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- the Client agrees to indemnify EPG against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.6 Where the Client has supplied goods for EPG to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. EPG shall not be responsible for any defects in the goods, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of goods supplied by the Client.
- 8.7 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any plumbing connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or dangerous access to crawl spaces or the roof) that EPG, or employees of EPG, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then EPG shall be entitled to delay installation of the Goods (**in accordance with the provisions of clause 7.2 above**) until EPG is satisfied that it is safe for the installation to proceed. EPG may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.8 The Client acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching; and
 - (e) create undesirable smells caused by a system as a result of its normal operation.
- 9. Specifications**
- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in EPG's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by EPG;
 - (b) while EPG may have provided information or figures to the Client regarding the performance of the Materials, the Client acknowledges that EPG has given these in good faith, and are estimates based on Clean Energy Council (CEC), Water Efficiency Labelling and Standards (WELS) scheme and/or industry prescribed estimates. The water efficiency may be less than estimates due to factors out of EPG's control (including, but not limited to, water pressure, water source, the mineral content of water based on geographical location, etc.).
- 9.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 9.3 EPG reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases EPG will notify the Client in advance of any such substitution.
- 9.4 The Client acknowledges that some buildings may not have the optimum orientation for the installation of the Goods or components and therefore understands and accepts that the Goods performance may be compromised in such situations. Notwithstanding the former EPG will use its best endeavours to install and position the Goods to maximise orientation and exposure to direct sunlight.
- 10. Rebates & Incentives**
- 10.1 The Client authorises EPG to apply in the Client's name for any grant, rebate or any other benefit (hereafter referred to as a Rebate) available, (*if applicable*) from the Commonwealth, State Government, or any local state Solar Feed Tariff Schemes in relation to the installation of a solar system and to receive payment of that Rebate on the Client's behalf.
- 10.2 The Client agrees to sign any necessary documents, provide any necessary information and take any necessary action EPG may require, to enable EPG to obtain payment of a Rebate.
- 10.3 If EPG receives payment of a Rebate, EPG will apply that payment in or towards satisfaction of the Price.
- 10.4 EPG is not responsible for any failure to obtain a Rebate and the Client shall remain liable to EPG for the whole of the Price and any other amounts due to EPG which are not paid in full.
- 10.5 The Client unconditionally assigns all Renewable Energy Certificates (RECs) and/or Smallscale Technology Certificates (STC's) to which the Client is entitled in respect of the Goods to EPG unless otherwise negotiated.
- 10.6 The Client acknowledges that, in certain circumstances, the Commonwealth Government, State Government or local government council (as applicable) may require repayment of a Rebate by the Client and in such circumstances EPG will have no liability to the Client.
- 11. Client Acknowledgments**
- 11.1 The Client acknowledges that while EPG may have provided information to it about the performance of solar heating systems, the Client acknowledges that EPG shall not be deemed to have made any warranty or representation, express or implied, in relation to the Goods or Services, including whether or not they are suitable for a particular purpose (whether such purpose was made known to EPG or not) unless the same is confirmed in writing.
- 11.2 The Client acknowledges that the Goods or Services are bought solely upon the Client's skill and judgement.
- 11.3 The Client acknowledges that the performance of the Goods may be affected by the actions of third parties and environmental conditions including, without limitation, the number of hours of sunlight, cloud cover, weather patterns, the location of the Goods and the location of surrounding structures and flora.
- 11.4 The Client acknowledges that they shall not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third party.
- 11.5 If EPGs notifies the Client that it intends to store onsite Goods, plant, equipment or tools to be used in performance of the Services, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 6.2.

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- 11.6 All quotations for Services in respect of other tradesmen will be treated strictly between the tradesmen and the Client. The Client agrees to indemnify EPG from any damage caused by any other tradesmen during and after the completion of the Services.
- 12. Compliance with Laws**
- 12.1 Both the Client and EPG agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 12.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Act, Regulations and Codes of Practice. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 12.3 EPG shall only supply and connect to Australian approved equipment. All plumbing Goods must be "Watermark" approved and all gas pipework must be compliance tested prior to commencing any work on the gas system.
- 12.4 The Client shall obtain (at the expense of the Client) all licenses and approvals (including local Government approvals) that may be required for the Services, unless otherwise agreed. In the event that EPG is instructed to arrange said licences and/or permits on behalf of the Client, then all associated such charges will be invoiced in accordance with clause 6.2.
- 13. Access**
- 13.1 The Client shall ensure that EPG has clear and free access to the work site at all times to enable them to undertake the Services. EPG shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of EPG.
- 14. Underground Locations**
- 14.1 Prior to EPG commencing any work the Client must advise EPG of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 14.2 Whilst EPG will take all care to avoid damage to any underground services the Client agrees to indemnify EPG in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.
- 15. Title To Goods**
- 15.1 EPG and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid EPG all amounts owing to EPG; and
 - (b) the Client has met all of its other obligations to EPG.
- 15.2 Receipt by EPG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 15.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 15.1 that the Client is only a bailee of the Goods and must return the Goods to EPG on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for EPG and must pay to EPG the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for EPG and must pay or deliver the proceeds to EPG on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of EPG and must sell, dispose of or return the resulting product to EPG as it so directs.
 - (e) the Client irrevocably authorises EPG to enter any premises where EPG believes the Goods are kept and recover possession of the Goods.
 - (f) EPG may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of EPG.
 - (h) EPG may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 16. Personal Property Securities Act 2009 ("PPSA")**
- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Buyer 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 Goods/Equipment and/or collateral (account) – being a monetary obligation of the Buyer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Buyer.
- 16.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EPG 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

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- (iii) correct a defect in a statement referred to in clause 16.2(a)(i) or 16.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, EPG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of EPG;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of EPG;
 - (e) immediately advise EPG of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.4 EPG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by EPG, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client must unconditionally ratify any actions taken by EPG under clauses 16.2 to 16.5.
- 16.9 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.
- 17. Security and Charge**
- 17.1 In consideration of EPG agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Client indemnifies EPG from and against all EPG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EPG's rights under this clause.
- 17.3 The Client irrevocably appoints EPG and each director of EPG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.
- 18. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 18.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify EPG in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow EPG to inspect the Goods/Equipment.
- 18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 18.3 EPG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, EPG makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. EPG's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Client is a consumer within the meaning of the CCA, EPG's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If EPG is required to replace the Goods under this clause or the CCA, but is unable to do so, EPG may refund any money the Client has paid for the Goods.
- 18.7 If the Client is not a consumer within the meaning of the CCA, EPG's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by EPG at EPG's sole discretion;
 - (b) limited to any warranty to which EPG is entitled, if EPG did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 18.1; and
 - (b) EPG has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, EPG shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by EPG;
 - (e) fair wear and tear, any accident, or act of God.
- 18.10 Notwithstanding anything contained in this clause if EPG is required by a law to accept a return then EPG will only accept a return on the conditions imposed by that law.
- 19. Intellectual Property**
- 19.1 Where EPG has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of EPG.

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- 19.2 The Client warrants that all designs, specifications or instructions given to EPG will not cause EPG to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify EPG against any action taken by a third party against EPG in respect of any such infringement.
- 19.3 The Client agrees that EPG may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which EPG has created for the Client.

20. Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at EPG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes EPG any money the Client shall indemnify EPG from and against all costs and disbursements incurred by EPG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EPG's contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies EPG may have under this contract, if a Buyer has made payment to EPG by credit card, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by EPG under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.
- 20.4 Without prejudice to any other remedies EPG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EPG may suspend or terminate the supply of Goods/Equipment to the Client. EPG will not be liable to the Client for any loss or damage the Client suffers because EPG has exercised its rights under this clause.
- 20.5 Without prejudice to EPG's other remedies at law EPG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EPG shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EPG becomes overdue, or in EPG's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Cancellation

- 21.1 EPG may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice EPG shall repay to the Client any money paid by the Client for the Goods/Equipment. EPG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by EPG as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Act 1988

- 22.1 The Client agrees for EPG to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by EPG.
- 22.2 The Client agrees that EPG may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 22.3 The Client consents to EPG being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Client agrees that personal credit information provided may be used and retained by EPG for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/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.
- 22.5 EPG may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
 - (b) name of the credit provider and that EPG is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

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- the Client no longer has any overdue accounts and EPG has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
- (g) information that, in the opinion of EPG, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.7 The Client shall have the right to request (by e-mail) from EPG:
- (a) a copy of the information about the Client retained by EPG and the right to request that EPG correct any incorrect information; and
- (b) that EPG does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8 EPG will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 22.9 The Client can make a privacy complaint by contacting EPG via e-mail. EPG will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 23. Equipment Hire**
- 23.1 Equipment shall at all times remain the property of EPG and is returnable on demand by EPG. In the event that Equipment is not returned to EPG in the condition in which it was delivered EPG retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all EPG shall have right to charge the Client the full cost of replacing the Equipment.
- 23.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
- (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by EPG to the Client.
- 23.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, EPG's interest in the Equipment and agrees to indemnify EPG against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 24. Dispute Resolution**
- 24.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 25. Construction Contracts Act 2004**
- 25.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 25.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 26. General**
- 26.1 The failure by EPG to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect EPG'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.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia in which EPG has its principal place of business, and are subject to the jurisdiction of the Perth courts in Western Australia.
- 26.3 Subject to clause 18, EPG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by EPG of these terms and conditions (alternatively EPG's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 26.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EPG nor to withhold payment of any invoice because part of that invoice is in dispute.
- 26.5 EPG may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 26.6 The Client agrees that EPG may amend these terms and conditions at any time. If EPG makes a change to these terms and conditions, then that change will take effect from the date on which EPG notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for EPG to provide Goods/Equipment to the Client.
- 26.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.