

## 1. Definitions and Interpretation / Agreement

(a) In these Terms and Conditions:

**"Agreement"** means the contract made between the Company and the Hirer in relation to the hire of Equipment, and includes:

- (a) The Hirer's Credit Application,
- (b) These Terms and Conditions,
- (c) Any quotation provided by the Company (if any) and
- (d) Any other Hire agreement or arrangement provided to or made with the Hirer by the Company, whether signed or not. **"Australian Consumer Law"** means Schedule 2 of the Competition and Consumer Act 2010(Cth);

**"CCA"** means the Competition and Consumer Act 2010 (Cth);

**"Company"** means Ready Industries Pty Ltd (ABN 40 109 057 972) trading as 1300TempFence, 1300Hoarding & 1300Dunnys

**"Company's Websites"** means  
www.1300TempFence.com.au,  
www.1300Hoarding.com.au,  
www.1300SiteCam.com.au and  
www.1300Dunnys.com.au

**"Consumer"** means a person acquiring Goods: of a kind ordinarily acquired for personal, domestic or household use or consumption; or at a price not exceeding \$40,000; or of a kind ordinarily acquired for personal, domestic or household use or consumption; or that consist of a vehicle or trailer acquired for use principally in the transport of goods on public roads, but excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:

- re-supply; or
- using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

**"Consumer Goods"** means 'goods of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

**"Consumer Guarantee"** means a consumer guarantee applicable to this contract under the Australian Consumer Law, including any Express Warranty.

**"Consumer Services"** means 'services of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

**"Equipment"** means and of the Company's Equipment or goods (including any associated or attached tools, accessories and parts) that are hired to the Hirer under these Terms and Conditions. This includes (but is not limited to) the Company's Fencing, Hoarding, Portable Toilets, Cameras, Water Barriers & Acoustic Curtains.

**"Express Warranty"** has the same meaning as in section 2(1) of the Australian Consumer Law.

**"Fair or Reasonable"** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law.

**"Fencing"** means all fencing including Panels, Gates, Crowd Barriers and Hoarding and other fencing components supplied to the Hirer pursuant to the Agreement.

**"Financing Statement"** and **"Financing change statement"** means a "financing statement" and a "financing change statement" within the meaning of s.10 of the PPSA.

**"Goods"** means any Equipment and goods supplied by the Company to the Hirer under these Terms and Conditions. **"GST"** means "GST" within the meaning of the GST Act. **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) (Cth) (in Australia) and Goods and Services Tax Act 1985 (in New Zealand) and the following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value".

**"Hirer"** means the person, company or other legal entity hiring the Equipment from the Company. Where the context permits, it includes Hirer's employees and contractors.

**"Hire Period"** means the term specified in clause 2. **"Insolvency Event"** means, in relation to a party, that one of the events specified in clause 15 has occurred in relation to that party.

**"Intellectual Property"** means any intellectual property including without limitation patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object

**"PMSI"** means a purchase money security interest as defined in section 14 of the PPSA.

**"Portable Toilet"** means all Portable Toilets and other portable toilet components supplied to the Hirer pursuant to the Agreement.

**"PPSA"** means the Personal Property Securities Act 2009 (Cth) (in Australia) and the Personal Properties Security Act 1999 (in New Zealand)

**"Proceeds"** means "proceeds" within the meaning of section 31 of the PPSA.

**"Rates"** means the rates notified by the Company to Hirer from time to time.

**"Register"** means the Personal Property Securities Register established under the PPSA.

**"Security Agreement"** means a "security agreement" within the meaning of s.10 of the PPSA.

**"Security Interest"** means a "security interest" within the meaning of section 12 of the PPSA.

**"Site"** means the land or premises located at the address on which Equipment is to be installed as requested by the Hirer.

(b) Terms and expression defined in or for the purposes of the CCA or the PPSA have the same meaning when used in these Terms and Conditions.

## 2. General

(a) These Terms and Conditions apply to:

- i) the establishment, operation and use of the account of the Hirer with the Company;
- ii) all transactions effected by the Hirer with the Company for the supply of Equipment and Goods or services on its account or on a cash basis unless otherwise expressly agreed in relation to any particular supply of Equipment, Goods and services; and
- iii) the exclusion of all others including any terms and conditions of the Hirer.

(b) These Terms and Conditions shall apply as if incorporated into each order placed by the Hirer with the Company.

## 3. Rates and Hire Period

(a) The Hire Period will commence upon the date of the delivery/installation of the Equipment and continue for the Initial Hire Period and any extensions of that period and the Hire Period will end when the Equipment is back in the possession of the Company.

(b) The Hire Period includes weekends and public holidays and is irrespective of the time the Plant is being used.

(c) Unless otherwise instructed by the Hirer, at the end of the Initial Hire Period and each extension of the Hire Period, the Company will automatically extend the Hire Period and invoice the Hirer for all extensions of the Hire Period. Extensions of the Hire Period will continue until the Hirer instructs the Company to pick up the Equipment, it is returned by the Hirer to the Company, or the Company decides to terminate the hire arrangements.

(d) Where the Hirer instructs the Company to pick up the Equipment under paragraph (c), the instructions will be given by the Hirer in time for the Equipment to be picked up and returned to the Company's premises within the Company's normal business hours. In the event of insufficient notice being given, hiring charges will continue to apply at the Company's absolute discretion until the Equipment is received by the Company. The Hire Period noted on the Agreement will not be deemed notice to the Hirer, that the Equipment is available for collection. Where the Company agrees to collect the Plant, the Hirer remains responsible for any theft, loss or damage to the Equipment until the Equipment is collected by the Company.

(e) During the Hire Period, the Hirer must pay the Company all hire fees as calculated in accordance with the Rates.

(f) All Rates are subject to change and may increase without notice.

(g) The Hirer is not permitted to claim a reduction or refund in hire fees for Equipment returned before the end of the Initial Hire Period or any extensions of that Hire Period.

## 4. Payment and default arrangements

(a) The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by the Company or otherwise notified to Hirer from time to time.

(b) The full amount of hiring charges will be invoiced upfront and payment is required to be paid in cash or cleared funds upfront unless there are applicable agreed account terms for the Hirer providing for alternative payment terms.

(c) The Hirer agrees to pay in cash or cleared funds all hiring charges on or before the commencement date of the Hire Term (unless agreed to the contrary by the Company) including delivery fees, pick up fees, hire fees, service fees and all taxes and charges incidental to the hire.

(d) The Hirer must notify the Company within seven (7) days of any errors with the invoice.

(e) The Hirer must not deduct any part of the hire fee as retention money.

(f) The Hirer agrees to pay the Company interest on all overdue balances at a rate of 1.5% per month until all sums owed to the Company under these Terms and Conditions have been paid in full.

(g) The Hirer is liable for any costs associated with the Company recovering overdue sums due under these Terms and Conditions and the Hirer and will indemnify the Company on demand for all expenses incurred by the Company in recovering any amounts which the Hirer fails to pay by the payment due date including without limitation any bank dishonour fees, commissions payable to any commercial or mercantile agents and any legal costs incurred by the Company (assessed on an indemnity basis) arising from the Hirer's default or breach of any of the Terms and Conditions.

(h) If the Hirer fails to pay for any goods or services supplied by the Company when due, then by notice to the Hirer, the Company may declare any amounts actually or contingently owing by the Hirer to the Company to be immediately due and payable.

(i) Unless the Hirer is entitled under agreed account terms to pay hiring charges under an approved credit account, the Hirer must on or before the commencement date of the Hire Term, and as a condition to the Hire Term commencing, provide

to the Company details of a valid debit or credit card it is authorised to use, including the card number, name of cardholder, expiry date and security code. The Hirer hereby authorises the Company to debit the account of the cardholder with any charges, fees, costs or liabilities validly arising under the Agreement as determined by the Company acting reasonably without further notice to or approval from the Hirer or the cardholder. It is the Hirer's responsibility to ensure that there are sufficient funds in the cardholder's account to allow a debit payment to be made in accordance with this authority. If there are insufficient funds, the cardholder may be charged a fee by the relevant financial institution and by the Company. The Company will keep the information provided in relation to the cardholder under this clause (including the card holder's account details) confidential. The Company will make reasonable efforts to keep any such information secure and that any of the Company's employees or agents who have access to the information do not make any unauthorised use, reproduction or disclosure of that information. The Company will only disclose this information to extent specifically required by law or for the purposes of this Agreement.

- (j) If the Hirer fails to pay for any goods or services supplied by the Company when due, the Company reserves the right at its discretion to disable some or all of the Camera system functionality until payment is made in full.

## 5. Credit Card Payments

- (a) If a Hirer pays its outstanding account by a credit card, at the time the transaction is processed the Hirer must pay to the Company an amount that the Company determines (acting reasonably) to be equal to the merchant service fee or any similar fee payable by the Company to its transaction acquirer in connection with the transaction.
- (b) The Company may add any amount payable by the Hirer under paragraph (a) to the Hire Charges of the relevant goods or services supplied or to be supplied by the Company to the Hirer

## 6. GST

- (a) To the extent that a party makes a taxable supply in connection with these Terms and Conditions, the consideration payable by a party under these Terms and Conditions represents the value of the taxable supply for which payment is to be made, unless otherwise expressly agreed.
- (b) Subject to clause 6(c), if a party makes a taxable supply pursuant to these Terms and Conditions for a consideration which, under clause 6(a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- (c) A party's obligation to make payment under clause 6(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

## 7. Cancellations of Orders

The Hirer may not cancel any order that it places for supply of Equipment after that order is accepted by the Company unless the Company gives its consent in writing. The Company may give or withhold its consent in its absolute discretion. The Company may give its consent subject to conditions that may include payment of money to the Company.

## 8. Suspension of Credit

The Company may at any time refuse to extend credit or further credit to the Hirer (and without the Company having or giving any reason for doing so).

## 9. Delivery, Installation and Removal

- (a) The Company will arrange delivery of the Equipment to the Site and will install the Equipment as far as possible in accordance with the Hirer's sketch plan or verbal directions. The Hirer

acknowledges that the Company may need to alter the position of the Equipment to accommodate services to the Site or other obstacles.

- (b) The Company will remove all Equipment at the end of the Hire Period unless the Company and the Hirer agree to extend the initial Hire Period.
- (c) The Hirer may request the Company to install additional Equipment or to remove part of the Equipment before the expiration of the Hire Period, subject to payment of the extra charges.
- (d) If the Company is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges. The additional delivery charges will be based on the duration of the delay and will be calculated for every 15 minute period (or part) using the rates published on the Company's Websites from time to time.
- (e) No refunds will apply in the event that the Equipment is returned/collected at the Hirer's request prior to the expiration date of any Hire Period.
- (f) Traffic management is not included on any standard quote from the Company but can be arranged for an additional fee.

## 10. Extra Charges

- (a) Additional Equipment requested by the Hirer will incur additional charges for hire and delivery/ installation. The removal of Equipment will not excuse the Hirer from the payment of the agreed hire charges for the Equipment.
- (b) The Hirer is entitled to one pick up included in the hire fees. Any additional pick ups will incur additional charges.
- (c) The Company will include up to 10gb of Data per Camera each 28 days in the standard hire rates. Each additional GB of data used by the Hirer for each Camera in each 28 day period will be invoiced at a rate of \$10 + GST per GB.

## 11. Use of Equipment

- (a) The Hirer must ensure that the Equipment is used strictly in accordance with the Company's instructions and any procedures recommended by the Company from time to time.
- (b) The Hirer must at all times keep the Equipment in good condition and must not, without the Company's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any Company logo, identifying mark or number, or indication of the Company's ownership of the Equipment.
- (c) The Hirer must at all times ensure that the Equipment is used in a safe manner, and must not deliberately damage, abuse or mistreat the Equipment or allow the Equipment to be deliberately damaged, abused, or mistreated.
- (d) If any damage, loss, theft or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must immediately notify the Company and provide full details of the damage, loss theft or destruction.
- (e) The Hirer must ensure that the Equipment is used at all times strictly in accordance with:
- all applicable laws, and
  - any relevant industry usage, custom and standards for goods similar to the Equipment.
- (f) The Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must obtain all permits required under any relevant planning, environment or health and safety legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful use of the Equipment.

## 12. Movement of Equipment

- (a) The Hirer may at its own risk move or alter the position of the Equipment on the Site. The Hirer indemnifies the Company against all claims for any loss or damage, howsoever arising, as a result of any movement of, or alteration to the Equipment.
- (b) The Hirer may engage the Company to move/ relocate the Equipment on the Site. The Company will charge a rate per metre/per item for this service, which the Hirer can obtain on request and which the Hirer shall pay in accordance with the Company's usual terms for moving/relocating Equipment.

## 13. Location and Use of the Equipment

- (a) The Hirer must expressly inform the Company of the location of the Equipment during the Hire Period.
- (b) The Hirer must not:
- part with possession of the Equipment;
  - allow any other person to use the Equipment; or
  - permit the removal of the Equipment from the location at which the Hirer represented it would be located without the prior written consent of the Company.
- (c) The Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.

## 14. Missing and Damaged Equipment

- (a) The Hirer is responsible for any stolen, missing or damaged Equipment while on hire to it, and the cost of replacement or repairs of that Equipment.
- (b) If the Equipment is returned or collected in a condition which in the reasonable opinion of the Company renders it unusable for hire, or if the Equipment is stolen or missing, the Hirer must pay the Company on demand the cost of replacement or repair of the Equipment calculated in accordance with the relevant Damaged & Lost Materials price list as published on the Company's Websites, from time to time. In no circumstances will title to the Equipment or any part of it pass to Hirer and the provisions set out in clause 12 relating to the Company's title rights shall apply.
- (c) Other than for the cost of replacing or repairing the Equipment, the Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by the Company arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or missing.

## 15. Hirer's Obligations

The Hirer will:

- (a) Accept full responsibility for the safe-keeping of the Equipment, and except as specified hereafter, shall indemnify the Company for all loss, theft of or damage to the Equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer.
- (b) Accept full responsibility for and indemnify the Company against all claims in respect of any injury to persons, or loss or damage to property, arising out of the possession or use of the Equipment during the Hire Period. However arising, whether from the negligence of the Hirer or the Company or other party and limiting the generality of the foregoing whether or not the Equipment was being operated by an employee, servant or agent of the Hirer or any person for whose acts the Company might be or is held to be responsible in connection with the use of the Equipment.
- (c) Not be entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor, without the Company's management prior written consent, part with the possession of the Equipment nor assign the benefit of this Agreement.

- (d) Not be entitled to remove the Equipment from the Site or allow it to be removed without the Company's permission.
- (e) Ensure that the Equipment is returned to the Company in the same condition as it was delivered.
- (f) Pay to the Company all hire and related charges and other costs as stipulated in accordance with the Company's Terms and Conditions and payment terms.
- (g) The Company may inspect the Equipment from time to time during the Hire Period and the Hirer shall permit or procure permission for representatives of the Company to enter the Site.

## 16. Exclusions of Warranties and Limitations of Liability

- (a) The Company acknowledges that the Australian Consumer Law and similar legislation provides:
  - i) certain rights for Consumers that cannot be excluded; and
  - ii) in relation to the supply of goods and services, that in some circumstances the Hirer may be a Consumer.
- (b) Subject to paragraph (c), the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of goods (including all Equipment) and services under these Terms and Conditions.
- (c) The Consumer Guarantees apply to any supply of goods and services where the Hirer is a Consumer, and the liability of the Company in connection with the Consumer Guarantees is not limited except as stated in these Terms and Conditions.
- (d) If the Hirer is a Consumer in relation to the supply of goods and services, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):
 

In the case of goods

  - i) the replacement of the goods or the supply of equivalent goods;
  - ii) the repair of the goods;
  - iii) the payment of the cost of replacing the goods or of acquiring goods equivalent to the goods; or
  - iv) the payment of the cost of having the goods repaired, except where it is not Fair and Reasonable to limit liability in this way. In the case of services

v) the supply of the services again; or

vi) the payment of the cost of having the services supplied again.
- (e) The Company:
  - i) excludes any liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment for any indirect damages or losses, or for any special, punitive or exemplary damages;
- (f) limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment and to the sums payable by the Hirer for the hire of the Equipment; and
- (g) excludes any liability for or in connection a claim that the Equipment supplied by the Company under these Terms and Conditions is not fit for a particular purpose, except where the Company has a liability as contemplated by paragraph (a) or (d).

- (h) The Hirer is liable for and shall indemnify the Company against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the Company and any environmental loss, cost, damage or expense) in respect of:
  - i) Personal injury;
  - ii) Damages to intangible property; or
  - iii) A claim by a third party in respect of the Hirer's hire or use of the Equipment. The Hirer's liability under this indemnity is diminished to the extent that the Company's breach of the Terms & Conditions (if any) or negligence causes the liability, claims, damage, loss, costs or expenses.

- (i) The indemnity set out in clause 16(f) is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the term of hire of the Equipment. It is not necessary for a party to incur an expense or make any payment before enforcing a right of indemnity conferred under these Terms & Conditions.
- (j) The Company will not be liable to the Hirer for any acts or omissions of any person supplied by the Company where that person is acting under the Hirer's direction or control during the Hire Period relating to the Equipment and the services provided under these Terms & Conditions and the Hirer shall indemnify the Company against all liability, claims, damages, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis) arising from or incurred in connection with such acts or omissions.
- (k) Subject to the provisions contained in clause 16, the Company will not be responsible for failure or delay in delivery, pickup, installation or removal and will have no liability to the Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.
- (l) The Hirer is liable for all costs, expenses, damages or loss (including consequential loss) whether caused by the Hirer or any third party arising directly or indirectly out of Use of the Equipment. The Hirer cannot recover from the Company compensation for any costs, expenses, damages or loss (including for consequential loss) arising in respect of this contract or the hiring or the use of the Equipment.
- (m) The Company may, but is not obliged to, store, hold or archive footage and data collected by the Company in relation to the Camera system at its discretion. The Company may permanently delete any archived data at any time at its sole discretion. The Company does not guarantee that any data will be stored, held or archived such that a Hirer may access it.
- (n) The Company will not be liable if any of the Camera System Equipment or functionality stops working for any reason at any time. The Hirer cannot recover from the Company compensation for any costs, expenses, damages or loss (including for consequential loss) arising in respect of the Camera System Equipment or functionality not working for any reason at any time.
- (o) Data plans are provided by third party telecommunications providers and the Company does not guarantee the network connectivity of any such telecommunications providers and will not be liable for any act or omission on the part of the telecommunications provider.

## 17. Retention of Title Arrangements

- (a) Property in and title to the Equipment remains with the Company in all circumstances (even if the Hirer goes into liquidation or becomes bankrupt during the hire period).
- (b) The Hirer's right to use the Equipment is as a bailee only.

- (c) The Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the Equipment.
- (d) Unless otherwise agreed by the Company, the Hirer must identify and store the Equipment in a manner that clearly shows that it is the property of the Company.

## 18. Equipment supplied will not become fixtures

- (a) The Hirer acknowledges and agrees that it is the intention of the parties that:
  - i) Where the Equipment is or might be characterized as fixtures to land; or
  - ii) Where the Equipment rests by its own weight on the land then the following provisions apply.
- (b) The Equipment shall be taken to be personal property of the Company and not fixtures despite having been connected to an electricity point, gas supply outlet, plumbing connection or another appliance or otherwise affixed to land.
- (c) In the event of a default by the Hirer under these Terms and Conditions, that in addition to any other enforcement provisions set out in these Terms and Conditions, if the Equipment can be removed without causing significant damage to the premises on which they are located, the Hirer consents to the Company and any authorized contractor acting on behalf of the Company, entering upon the premises of the Hirer or any premises where they are located or have been installed for the purposes of disconnecting them from an electricity point, plant or generator, gas supply outlet, plumbing connection or another appliance (as the case may be) and removing and retrieving them.
- (d) In the event of the Company exercising its rights under sub paragraph c), the Hirer:
  - i) must not make any claim against the Company; and
  - ii) must indemnify the Company against any claim by any third party (including without limitation the owner of the relevant property) in contract, tort (including negligence) or otherwise arising from or in connection with the exercise of those rights including without limitation for the cost of making good the premises arising from or connected with the removal of the Equipment or for any loss or damage (whether direct or indirect) suffered by the Hirer or any third party.

## 19. Personal Property Securities Act arrangements

Acknowledgment of security agreement and security interest The Hirer acknowledges and agrees that:

- (a) These Terms and Conditions are a security agreement for the purposes of the PPSA;
- (b) The Company has a security interest in the Equipment and in any present or after acquired property that represents proceeds arising in respect of any dealings with the Equipment; and
- (c) The security interest secures all amounts owing by the Hirer to the Company in connection with the hire of the Equipment and all obligations arising under these Terms and Conditions.

## 20. Acknowledgment of arrangements for financing statements

The Hirer acknowledges and agrees as follows:

- (a) Financing statements and financing change statements
  - i) The Company may at any time register a financing statement (or, if relevant, a financing change statement) on the PPS Register in relation to its security interest in the Equipment that may be supplied under these Terms and Conditions that may include terms that:

- ii) Describe the Company as the “secured party” and the Hirer as the “grantor”;
- iii) Describe the Equipment supplied by the Company to the Hirer from time to time pursuant to these Terms and Conditions as collateral in the class of “other goods” (or in such other class as the Company may reasonably determine is applicable including (without limitation) in the class of “other goods” or, if applicable, the collateral may be described by serial number);
- iv) Specifies that the security interest that the Company holds in the collateral is a PMSI in accordance with item 7 of the table in section 153(1) of the PPSA to the extent that it secures payment of the amounts owing in connection with that collateral; and
- v) Specifies that the security interest affects “proceeds” and, in particular, all present and after acquired property that represents proceeds of all Equipment may be supplied under these Terms and Conditions

## 21. Period of registration

- (a) The Company may register a financing statement or financing change statement on the PPSA Register for any period that the Company determines (in its discretion)
- (b) Payment of fees and costs  
Upon request made by the Company (and in its absolute discretion), the Hirer may be required to pay to the Company all fees, charges and expenses that the Company may reasonably incur in:
  - i) preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to the Company under these Terms and Conditions;
  - ii) maintaining any such registration; or
  - iii) enforcing any security interest granted to the Company under these Terms and Conditions. These fees, charges and expenses may be incurred by or with an agent that acts on behalf of the Company.
- (c) When registration to be affected  
The Company may register its security interest on the Register at any time so long as the Company believes on reasonable grounds that it will become a secured party in relation to the Equipment including, without limitation, when the Hirer signs or otherwise adopts or accepts the Terms and Conditions in a manner proposed by the Company.
  - i) A security interest in the Equipment will attach to the Equipment at the time that the Hirer has rights in the Equipment and not at any later time.
  - ii) The Hirer must do anything reasonably required by the Company to enable the Company to register the security interest as a PMSI and to maintain that registration.

## 22. Confidential Information

- (a) The Company and the Hirer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275 (1) of the PPSA except that the Company may disclose that information to an interested person where section 275(7) of the PPSA applies.
- (b) The Hirer agrees that it will not authorize the disclosure of any information of the kind described in section 275 (1) of the PPSA.

## 23. Enforcement

- (a) If the Hirer fails to pay an amount owing when due or if it fails to perform any of its obligations in connection with the supply Equipment, the Hirer agrees that the Company shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize the

Goods by any method permitted by law. For these purposes, and without limiting any other rights of the Company under the PPSA as a secured party, the Hirer further agrees:

- i) upon demand made by the Company, to immediately deliver up to the Company the Equipment;
- ii) to irrevocably authorise the Company to enter any premises occupied by the Hirer in order to search for, retrieve and remove the Equipment to which the Company has title and which are the subject of a security interest as provided for by these Terms and Conditions;
- iii) to do all things necessary to immediately facilitate the Company's access to the Hirer's premises and to assist the Company to locate and identify the Equipment;
- iv) to authorize the Company to resell or re-hire the Equipment seized and apply the proceeds of sale or re-hire in payment of any monies that the Hirer owes it;
- v) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph, the provisions of this paragraph shall prevail.

## 24. Application of certain further PPSA provisions

To the extent they apply, the following provisions of the PPSA: section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134 (1) (retention of collateral) confer rights on the Company. The Hirer agrees that in addition to those rights, the Company shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Company may do so in any manner it sees fit including (in respect of dealing or disposing) by private or public sale, lease or licence.

## 25. Contracting out provisions

To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest under, or in connection with this Agreement the following provisions of the PPSA do not apply and for the purposes of section 115 of the PPSA are “contracted out” of this document in respect of all Goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Company to give a notice to the Hirer); section 96 (retention of accession); section 125 (obligation to dispose of or retain collateral); section 121(4) (notice of grantor); section 130 (notice of disposal to the extent it requires the Company to give notice to the Hirer); section 129 (2) & (3) (d) (contents of statement of account after disposal); section 132 (4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re- instatement of security document).

## 26. Notices

- (a) The Hirer agrees that the Company does not need to give the Hirer any notice under the PPSA (including without limitation a notice of a verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.
- (b) In the event of a default by the Hirer in performing of any of its obligations in connection with a supply of the Equipment, the Hirer agrees that (as between the parties to the Terms and Conditions) the Company is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Equipment.
- (c) In the event that there is a change in any of the Hirer's details and contact numbers or addresses set out in these Terms and Conditions or contained

in any application for credit made by the Hirer prior to executing such application, the Hirer agrees to notify the Company in writing within 5 days of such change.

## 27. Termination of Hire

The Company may terminate the Agreement without notice to the Hirer, if the Hirer:

- (a) Breaches any of the Terms and Conditions; or has a winding up petition presented against it, is wound up, goes into voluntary liquidation, commits an act of bankruptcy has a receiver appointed to its assets or any of them makes an assignment or compromise for the benefit of its creditors, is placed under official management or ceases to carry on business.
- (b) Upon termination of the Agreement, the Company shall be entitled to take possession of the Equipment and for this purpose the Hirer irrevocably authorises the Company or its representatives to enter onto the Site and agrees to indemnify the Company in respect of any claims, damages and expenses associated with the recovery of the Equipment.
- (c) The Company shall be entitled to take possession of the Equipment without authority of the Hirer if the Hirer fails to comply with payment terms.

## 28. Changes to Terms and Conditions

- (a) The Company may amend these Terms and Conditions at any time by publishing the amendments on its Company's Websites or otherwise notifying the Hirer.
- (b) The amended Terms and Conditions will apply to any hire of the Equipment from the time the amendments are published on the Company's Websites or otherwise notified to the Hirer. Any such amendment will not affect the validity or enforceability of the agreement between the Company and the Hirer in any way.

## 29. Signatory's Warranties

Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:

- (a) have the Hirer's authority to contract with the Company on the Hirer's behalf; and
- (b) have been authorised by the Hirer to bind the Hirer to hire the Equipment on the terms set out in the Agreement, and agrees to indemnify the Company against all losses, costs and claims incurred by the Company if this is not the case.

## 30. Traffic Products

1300TempFence Obligations 1300TempFence will:

- (a) Allow the Customer to take and use the Equipment for the Hire Period;
- (b) Provide the Equipment to the Customer clean and in good working order;
- (c) Collect the Equipment within 2 days of being requested to do so by the Customer and issuing to the Customer a Customer Pick Up Number.

**NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you request a pick-up from 1300TempFence.**

## 31. Obligations of the Customer

The Customer must:

- (a) Deliver the Equipment to 1300TempFence when it is due back;
- (b) Return the Equipment to 1300TempFence clean and in good repair;
- (c) Satisfy itself at Commencement that the Equipment is suitable for its purposes;

- (d) Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by 1300TempFence or posted on the Equipment;
- (e) Indemnify 1300TempFence for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- (f) Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized;
- (g) Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed;
- (h) Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- (i) Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify 1300TempFence in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- (j) Operate the Equipment with an adequate motor vehicle and/or power source;
- (k) Report and provide full details to 1300TempFence of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

### 32. The Customer Must Not;

- (a) Tamper with, damage or repair the Equipment;
- (b) Lose or part with possession of the Equipment;
- (c) Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- (d) Allow any person to drive a Motor Vehicle whilst transporting our Equipment, if the person:
  - i) does not hold a suitable licence to drive that class of Motor Vehicle; or
  - ii) is affected by drugs and/or alcohol.
- (e) Exceed the recommended or legal load and capacity limits of the Equipment;
- (f) Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.
- (g) Exceed the recommended or legal speed limit for the Equipment.

### 33. Payments by the Customer to 1300TempFence

- (a) On or before Commencement (or as otherwise specifically agreed with 1300TempFence), the Customer will pay the Hire Charge.
- (b) Immediately on request by 1300TempFence, the Customer will pay:
  - i) the new list price of any Equipment which is for whatever reason not returned to 1300TempFence

**(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment)**

- ii) all costs incurred in cleaning the Equipment;
- iii) the full cost of repairing any damage to the Equipment caused or contributed to by the

Customer, unless expressly agreed otherwise in this Contract;

- iv) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;
  - v) all costs incurred by 1300TempFence in delivering and recovering possession of the Equipment;
  - vi) Interest for late payment of amounts owing by the customer, at the pre-judgement interest rate set by the Local Court of NSW from time to time;
  - vii) the cost of fuels and consumables provided by 1300TempFence and not returned by the Customer;
  - viii) any reasonable expenses and legal costs (including commission payable to a commercial agent) incurred by 1300TempFence in enforcing this Contract due to the Customers default
  - ix) all costs of repairing or replacing tyres, including road service; and
  - x) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.
- (c) Without limiting the ability of 1300TempFence to recover all amounts owing to it, the Customer authorises 1300TempFence to charge any amounts owing by the Customer to any credit card or account details of which are provided to 1300TempFence.

### 34. Remote Hire

Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 2 and elsewhere in these Hire Contract Conditions;

- (a) The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by 1300TempFence ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometer rate travelled by 1300TempFence staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by 1300TempFence and its staff in connection with travel to and from the Remote Area;
- (b) Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;
- (c) The Customer is responsible at its cost for daily maintenance and care of all Multiple items of Equipment hire by a Customer on the one site will only be fittings and lubrication of all grease points.

### 35. Theft Loss Damage Waiver

- (a) Theft Loss Damage Waiver ('TLD Waiver') is not insurance but is an agreement by the Company to limit the Hirer's liability in certain circumstances for theft, loss or damage to Traffic Equipment or mobile Plant to an amount called the TLD Waiver Excess. The TLD Waiver Excess is explained below in clauses 35(e). Please note the limitations set out in clause 35(f).
- (b) Subject to clause 35(c), the TLD Waiver Fee will be automatically charged to the Hirer in addition to the Hire Charges and will be set out in the Hire Schedule. The TLD Waiver Fee is calculated as a percentage of the Hire Charge.
- (c) The Hirer is not required to pay the TLD Waiver Fee from the date the Hirer produces a certificate of currency for an appropriate policy of insurance that covers theft, loss or damage to the Equipment during the Hire Period for an amount not less than the replacement value of the Equipment ('the Hirers Insurance'). For the avoidance of any doubt,

the Hirer is liable to pay the TLD Waiver Fee for that portion of the Hire Period where a certificate of currency required pursuant to this clause 35(c) remains outstanding ("Uninsured Period") and the Hirer is not entitled to any credit and/or reimbursement of the TLD Waiver Fee charged and/or paid that relates to the Uninsured Period. The Hirer is responsible for any excess and any other costs associated with the Hirer's insurance and is responsible for any shortfall in the repair or replacement costs of the Equipment following payment of any amount received under the Hirer's insurance, including any loss the Company suffers as a result of not being able to Hire the Equipment.

- (d) Where the Hirer has paid the TLD Waiver Fee, the Company will waive their right to claim against the Hirer for theft, loss or damage to the Equipment if:
  - i) for theft, the Hirer has promptly reported the incident to the police and provided the Company with a written police report;
  - ii) the Hirer has co-operated with the Company and provided the details of the incident, including any written or photographic evidence the Company requires;
  - iii) the theft, loss or damage does not fall into one or more of the circumstances set out in clause 35(f); and
  - iv) the Hirer has paid the Company the TLD Waiver Excess.
- (e) The TLD Waiver Excess for each item of Equipment is the amount calculated as follows:
  - i) (Replacement) where the Equipment is lost, stolen or damaged beyond repair:
  - ii) Subject to paragraph (b), the TLD Waiver Excess for each item of Equipment that is lost, stolen or damaged beyond repair will be the amount equal to the greater of:
    - iii) \$700.00; or
    - iv) 15% of the New Replacement Cost.
  - v) Where the New Replacement Cost is less than \$700.00, the TLD Waiver Excess will be an amount equal to the New Replacement Cost.
  - vi) (Repair) where the Equipment is partially damaged and can be repaired:
  - vii) the TLD Waiver Excess for each item of Equipment that is partially damaged and can be repaired will be the amount equal to the greater of:
    - viii) \$700.00; or
    - ix) 15% of the repair cost.
  - x) Where the repair cost of the Equipment is less than \$700, the TLD Waiver Excess will be an amount equal to the lesser of the repair cost and the New Replacement Cost.

- (f) Even if you have paid the TLD Waiver Fee, the Company will not waive their rights to claim against the Hirer for theft, loss or damage to the Equipment and TLD Waiver will not apply if the loss, theft or damage:
  - i) has arisen as a result of the Hirer's breach of a clause of this Hire Agreement;
  - ii) has been caused by the Hirer's negligent act or omission;
  - iii) has arisen as a result of the Hirer's use of the Equipment in violation of any laws;
  - iv) has been caused by the Hirer's failure to use the Equipment for its intended purpose, or in accordance with the Company's instructions or the manufacturer's instructions;
  - v) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water,

wharves, bridges or vessels of any kind;

vi) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment;

vii) has been caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;

viii) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;

ix) is caused by the negligence, or wilful act by the Hirer or the Hirer's employees, agents, customers or contractors;

x) is to tyres or tubes;