

**Ready Industries Pty Ltd**  
**(ABN 40 109 057 972) trading as**  
**either 1300TempFence, 1300Hoarding,**  
**1300SiteCam or 1300Dunnys**

**Hire Terms and Conditions.**

**1. Definitions and Interpretation**

(i) In these Hire 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 Hire 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 either 1300TempFence, 1300Hoarding, 1300SiteCam or 1300Dunnys.

“**Company’s Websites**” means [www.1300TempFence.com.au](http://www.1300TempFence.com.au), [www.1300Hoarding.com.au](http://www.1300Hoarding.com.au), [www.1300SiteCam.com.au](http://www.1300SiteCam.com.au) and [www.1300Dunnys.com.au](http://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 any of the Company’s Equipment or goods (including any associated or attached tools, accessories and parts) that are hired to the Hirer under these Hire 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(f) 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.

“**Force Majeure Event**” means, one of the events specified in clause 21.

“**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 3.

“**Insolvency Event**” means, in relation to a party, that one of the events specified in paragraph 20 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.

- (ii) 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 Hire 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 Hire 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 (“**the Hire Start Date**”) and subject to the provisions contained in clauses 3 (b), 3 (c) and 3 (e) hereof shall 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) Subject to the provisions contained in clause 3 (c) the parties agree that:

- (i) The Hire Period may not exceed a period in excess of 2 years from the Hire Start Date

- (ii) The Hire Period may not operate for an indefinite period of time and

- (iii) The Agreement will not operate as PPS Lease as defined in s 13 of the PPSA and the PPSA provisions contained in paragraph 19 hereof shall not apply.

- (c) In the event that the Company agrees in writing with the Hirer that:

- (i) The Hire Period may exceeds a period of more than 2 years from the Start Date or

- (ii) The Hire Period may operate for an indefinite period of time, or

- (iii) That the Agreement may operate as a PPS Lease the parties agree that hire arrangements herein shall constitute a PPS Lease as defined in s 13 of the PPSA and the PPSA provisions contained in paragraph 19 hereof shall also apply.

- (d) The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

- (e) Subject always to the provisions contained in clause 3 (b) and 3 (c) hereof, 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 up to a total Hire Period of not more than 2 years from the Hire Start Date. The Hire Period will not continue beyond that time and will cease either on that date or earlier when 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.

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

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

- (h) 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 fee payable to the Company by the Hirer to hire the Equipment (**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 the Hire fee 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. Tax

invoices are supplied via email only, as works are completed. Upload of invoices to 3rd party portals is strictly not available.

- (c) The Hirer agrees to pay in cash or cleared funds the Hire fee 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 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 dishonor 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 these Hire 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 authorized to use, including the card number, name of cardholder, expiry date and security code. The Hirer hereby authorizes 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 Hirer 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 Hirer 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 unauthorized 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 provided by the Company to the Hirer until payment is made in full.
- (k) The following provisions shall apply where the Hirer is in breach of the provisions contained in this clause 4 and any other obligations of the Hirer contained in these Hire Terms and Conditions and has failed to rectify the specified default after the Company has given it 3 days written notice to do so:
  - (i) Upon demand made by the Company, to immediately deliver up to the Company the Equipment;

- (ii) To irrevocably authorize 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;
- (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;

Note: Where the Agreement between the Company and the Hirer operates as a PPS Lease, in addition to the default provisions specified in clause 4 (k) hereof, the enforcement provisions contained in paragraph 19 (d) shall also apply.

- (l) Where the Company has recorded any credits for the Hirer (including without limitation on any Statement of Account or Tax Invoice), then any credits that remain unused after three (3) months from the date of issuance shall be written-off by the Company and no longer appear on any Statement of Account or Tax Invoice for the Hirer.

## 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 Equipment 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:
  - (i) All applicable laws, and
  - (ii) 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

- (f) 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.
- (g) The Hirer is responsible for filling water-filled Traffic Safety Barriers and End Treatments with water and maintaining them with a full level of water in accordance with the manufacturer's instructions. The Company will only be responsible for repairing or replacing leaking water-filled Traffic Safety Barriers or End Treatments if notified in writing within 48 hours of delivery. Leaks identified after this time must be fixed or replaced at the Hirer's cost.

## 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:
  - (i) Part with possession of the Equipment;
  - (ii) Allow any other person to use the Equipment;
  - (iii) 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 17 (a) 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 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) The Hirer is responsible for returning the hired Equipment clean and in the same condition as it was received. If the Equipment is returned unclean, the Hirer may be charged a cleaning fee, the amount of which is determined by the Company.
- (f) Pay to the Company all hire and related charges and other costs as stipulated in accordance with the Company's Hire 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 (including without limitation the hire of Equipment), 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 the hire of Equipment) and services under these Hire 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 Hire 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:

- (i) The supply of the services again; or
  - (ii) 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 (including the Equipment) and for all claims under or relating to the Equipment for any indirect damages or losses, or for any special, punitive or exemplary damages; and
  - (ii) Excludes any liability for or in connection a claim that the Equipment supplied by the Company under these Hire Terms and Conditions is not fit for a particular purpose, except where the Company has a liability as contemplated by paragraph 16 (a) or (d).
- (f) 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 Hire Terms & Conditions (if any) or negligence causes the liability, claims, damage, loss, costs or expenses.
- (g) 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 Hire Terms & Conditions.
- (h) 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 Hire 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.
- (i) Subject to the provisions contained in clause 16 (a) and (d), 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.
- (j) 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.
- (k) 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.

(l) 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.

(m) 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, administration 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, sublet, 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

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:
  - (a) 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 and
  - (b) In the event of a default by the Hirer under these Hire Terms and Conditions, that in addition to any other enforcement provisions set out in these Hire 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 the Equipment is located or have been installed for the purposes of disconnecting the Equipment from an electricity point, plant or generator, gas supply outlet, plumbing connection or another appliance (as the case may be) and removing/ retrieving the Equipment.
  - (c) In the event of the Company exercising its rights under sub paragraph (a) (ii) hereof, the Hirer: agrees that:
    - It will not make any claim against the Company and
    - It will 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

In the event, that the Company has acknowledged and agreed that the Agreement it has made or proposes to make with the Hirer operates as a PPS Lease as defined in s13 of the PPSA, (as provided in paragraph 3 (c) of these Hire Terms and Conditions) then the following provisions shall apply.

### (a) Acknowledgment of security agreement and security interest

The Hirer acknowledges and agrees as follows:

- (i) These Hire Terms and Conditions are a security agreement for the purposes of the PPSA;
- (ii) 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
- (iii) 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 Hire Terms and Conditions.

### (b) Acknowledgment of arrangements relating to financing statements

The Hirer acknowledges and agrees as follows:

- (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:

- Describe the Company as the "secured party" and the Hirer as the "grantor";
- 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 or, if applicable, the collateral may be described by serial number;
- Specify 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
- Specify that the security interest affects "Proceeds" and, in particular, all present and after acquired property that represents proceeds of the Equipment that may be supplied under these Terms and Conditions and
- Specify that the Equipment supplied under these Terms and Conditions is not inventory.

- (ii) 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).

- (iii) 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.

- (iv) 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.

- (v) 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.

- (iv) 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:

- 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;

- Maintaining any such registration; or
- 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) Confidential Information

- (i) 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 (l) of the PPSA except that the Company may disclose that information to an interested person where section 275 (7) of the PPSA applies.
- (ii) The Hirer agrees that it will not authorize the disclosure of any information of the kind described in section 275 (l) of the PPSA.

### (d) Enforcement.

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.

### (e) 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.

(f) **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).

(g) **Notices**

- (i) 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. 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.
- (ii) 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.

## 20. Termination of Hire

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

- (a) Breaches any of these Terms and Conditions or
- (b) Becomes subject to an **Insolvency Event** then any monies actually or contingently owing to the Company at that time under any contract formed on these Hire Terms (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by the Company).

For the purposes of this clause "**Insolvency Event**" shall mean and include if the Hirer:

- (i) Becomes insolvent or bankrupt;
  - (ii) Is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager, or an Administrator is appointed with respect to the Hirer or any of the Hirer's assets;
  - (iii) Makes an arrangement or composition with the creditors of the Hirer or attempts to make such an arrangement or composition;
  - (iv) Is unable to pay their debts as they fall due;
  - (v) Fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
  - (vi) Ceases business;
  - (vii) Has execution levied against any of their assets; or
- (c) Upon termination of the Agreement, the Company shall be entitled to take possession

of the Equipment and for this purpose the Hirer irrevocably authorizes 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.

- (d) 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.

## 21. Force Majeure

- (a) The Company may suspend any or all of its obligations to the Hirer that are affected by any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown, theft, crime, delays in shipping, or the inability of the Company to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of the Company (each a **Force Majeure Event**) and the Company is not responsible for any delay, default, loss or damage due to any Force Majeure Event.
- (b) When a Force Majeure Event ceases to affect the performance of any of the Company's obligations, the Company must lift any suspension of those obligations that it makes under clause 21 (a).

## 22. Changes to Terms and Conditions

- (a) The Company may amend these Hire Terms and Conditions at any time by publishing the amendments on its Company's Websites or otherwise notifying the Hirer.
- (b) The amended Hire 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.

## 23. 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 authorized by the Hirer to bind the Hirer to hire the Equipment on the terms set out in these Hire Terms and Conditions and agrees to indemnify the Company against all losses, costs and claims incurred by the Company if this is not the case.

## 24. Traffic Products

**Note; The following provisions relate to all "Traffic Products" (as defined by the Company from time to time) provided by the Company to the Hirer during the Hire period.**

The Company will:

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

**NOTE TO Hirer: The Hirer must return the Equipment at its expense when due back unless it requests a pick-up from the Company.**

## 25. Further Obligations of the Hirer

In additions to the Hirer's obligations set out in paragraph 15 above, the Hirer further agrees that it shall:

- (a) Deliver the Equipment to the Company when it is due back;
- (b) Return the Equipment to the Company clean and in good repair;
- (c) Satisfy itself at the commencement of the Hire Period 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 the Company or posted on the Equipment;
- (e) Indemnify the Company for all injury and/or damage to the extent caused or contributed to by the Hirer 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 Hirer is authorized by the Hirer to do so and the Hirer 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 Hirer'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 Hirer;
- (j) Operate the Equipment with an adequate motor vehicle and/or power source;
- (k) Report and provide full details to the Company of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

## 26. The Hirer 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 these Terms and Conditions;
- (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.

## 27. Payments by the Hirer to the Company

- (a) On or before the commencement of the Hire Period (or as otherwise specifically agreed with the Company,) the Hirer will pay the Hire Charge.
- (b) Immediately on request by the Company the Hirer will pay the new list price of any Equipment which is for whatever reason not returned to the Company.
- (c) Subject only to any express written agreement made between the Company and the Hirer to the contrary, the Hirer shall be liable for:

- (i) All costs incurred in cleaning the Equipment;
  - (ii) The full cost of repairing any damage to the Equipment caused or contributed to by the Hirer;
  - (iii) Stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of the Hirer's use of the Equipment;
  - (iv) All costs incurred by the Company in delivering and recovering possession of the Equipment;
  - (v) Interest for late payment of amounts owing by the Hirer at the rate prescribed under the Penalty Interest Rate Act from time to time;
  - (vi) The cost of fuels and consumables provided by the Company and not returned by the Hirer;
  - (vii) Any reasonable expenses and legal costs on an indemnity basis (including commission payable to a commercial agent) incurred by the Company arising out of or in connection to the Hirer's default under these Hire Terms and Conditions:
  - (viii) All costs of repairing or replacing tyres, including road service;
  - (ix) If any damage and/or theft waiver applies, the amount for which the Hirer is liable as set out in these Hire Terms and Conditions and
  - (x) For all loss and damage arising from the loss or theft of the Equipment
- (d) Without limiting the ability of the Company to recover all amounts owing to it, the Hirer authorizes the Company to charge any amounts owing by the Hirer to any credit card or account details of which are provided to the Company.

## 28. Remote Hire

Where the Equipment is at any time hired by the Hirer to be located in an area nominated by the Company as a "Remote Area", the following clauses will also apply, in addition to the obligations of the Hirer provided for elsewhere in these Hire Terms and Conditions:

- (a) The Hirer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by the Company 1 ("Remote Area Charges"). The Remote Area Charges will be calculated on a per kilometer rate travelled by the Company's 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 the Company and its staff in connection with travel to and from the Remote Area;
- (b) Multiple items of Equipment hire by the Hirer on the one site will only be charged for one call out fee;
- (c) The Hirer is responsible at its cost for daily maintenance and care of all multiple items of Equipment hire by the Hirer on the one site will only be fittings and lubrication of all grease points.

## 29. 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.

**Note: Excess: The TLD Waiver Excess is explained below in clauses 29 (d).**

Subject to clause 29 (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.

- (b) 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 29 (b) 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.
- (c) 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 29 (f); and
  - (iv) The Hirer has paid the Company the TLD Waiver Excess.
- (d) 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:
    - \$700.00; or
    - 15% of the New Replacement Cost.
  - (iii) Where the New Replacement Cost is less than \$700.00, the TLD Waiver Excess will be an amount equal to the New Replacement Cost.
- (e) Even if the Hirer has 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 provision contained in these Terms and Conditions;
  - (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.