

1. Definitions

- 1.1 “CPE” means CPE Machinery Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of CPE Machinery Pty Ltd.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting CPE to provide Goods (and/or hiring Equipment) as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by CPE to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied either for purchase or hire by CPE to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by CPE to the Customer.
- 1.5 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods/Equipment purchase or hire as agreed between CPE and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and CPE.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that CPE shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by CPE in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CPE in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of CPE; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At CPE’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by CPE to the Customer; or
 - (b) CPE’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 CPE reserves the right to change the Price if a variation to CPE’s quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or due to fluctuations in the currency exchange rates or due to variations to the price of freight, insurance, customs and other duties or as a result of increases to CPE in the cost of materials and labour) will be charged for on the basis of CPE’s quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by CPE within ten (10) working days. Failure to do so will entitle CPE to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At CPE’s sole discretion a non-refundable deposit may be required.
- 5.4 The Customer agrees that all shipping costs are non-refundable.
- 5.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by CPE, which may be:
- (a) before delivery of the Goods/Equipment;
 - (b) thirty (30) days following the end of the month in which a statement is delivered to the Customer’s address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by CPE.
- 5.6 Payment may be made by cash, bank cheque, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and CPE.
- 5.7 All prices quoted on Goods shall be FOB (Freight On Board), ex CPE’s warehouse.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by CPE nor to withhold payment of any invoice because part of that invoice is in dispute.

5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to CPE an amount equal to any GST CPE must pay for any supply by CPE under this or any other agreement for the sale of the Goods/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods/Equipment

6.1 Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:

- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods/Equipment at CPE’s address; or
- (b) CPE (or CPE’s nominated carrier) delivers the Goods/Equipment to the Customer’s nominated address even if the Customer is not present at the address; or
- (c) the Customer or the Customer’s nominated carrier takes possession of the Goods/Equipment from the wharf at the Port of Destination.

6.2 At CPE’s sole discretion the cost of delivery is in addition to the Price.

6.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then CPE shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

6.4 CPE may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 At the Customers own discretion, the Goods will be shipped by CPE to the Customers business address and all shipping costs will be added to the Customers invoice.

6.6 Any time or date given by CPE to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and CPE will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7. Risk

7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, CPE is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CPE is sufficient evidence of CPE’s rights to receive the insurance proceeds without the need for any person dealing with CPE to make further enquiries.

7.3 If the Customer requests CPE to leave Goods outside CPE’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.

7.4 The Customer acknowledges and agrees that all advertised specified Goods are approximate only and are not binding upon CPE. CPE reserves the right to make changes to the specifications of Goods without prior notification to the Customer.

8. Title To Goods

8.1 CPE and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid CPE all amounts owing to CPE; and
- (b) the Customer has met all of its other obligations to CPE.

8.2 Receipt by CPE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

8.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to CPE on request.
- (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for CPE and must pay to CPE the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for CPE and must pay or deliver the proceeds to CPE on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of CPE and must sell, dispose of or return the resulting product to CPE as it so directs.
- (e) the Customer irrevocably authorises CPE to enter any premises where CPE believes the Goods are kept and recover possession of the Goods.
- (f) CPE may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CPE.
- (h) CPE may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

9. Personal Property Securities Act 2009 (“PPSA”)

9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to CPE for Services – that have previously been supplied and that will be supplied in the future by CPE to the Customer.

- 9.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CPE may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, CPE for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of CPE;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of CPE;
 - (e) immediately advise CPE of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 CPE and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by CPE, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by CPE under clauses 9.2 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 9.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 9 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 9 will apply generally for the purposes of the PPSA.

10. Security and Charge

- 10.1 In consideration of CPE agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies CPE from and against all CPE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CPE's rights under this clause.
- 10.3 The Customer irrevocably appoints CPE and each director of CPE as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 11.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify CPE in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow CPE to inspect the Goods/Equipment.
- 11.2 The Customer agrees to obtain a Return Authorisation (RA) number prior to returning any product for credit. The RA number must be clearly stated on the shipping label and the Goods must be returned to CPE within the time frame specified in clause 11.1. If any Goods are returned to CPE without the RA number, or have been unapproved for return, they will not be accepted by CPE.
- 11.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.4 CPE acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CPE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. CPE's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.6 If the Customer is a consumer within the meaning of the CCA, CPE's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.7 If CPE is required to replace the Goods under this clause or the CCA, but is unable to do so, CPE may refund any money the Customer has paid for the Goods.
- 11.8 If the Customer is not a consumer within the meaning of the CCA, CPE's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by CPE at CPE's sole discretion;
 - (b) limited to any warranty to which CPE is entitled, if CPE did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.9 Subject to this clause 11, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) CPE has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

- 11.10 Notwithstanding clauses 11.1 to 11.9 but subject to the CCA, CPE shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods/Equipment;
 - (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by CPE;
 - (e) fair wear and tear, any accident, or act of God.
- 11.11 In the case of second hand Goods or Equipment, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods or Equipment prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by CPE as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that CPE has agreed to provide the Customer with the second hand Goods or Equipment and calculated the Price of the second hand Goods or Equipment in reliance of this clause 11.11.
- 11.12 CPE may in its absolute discretion accept non-defective Goods for return in which case CPE may require the Customer to pay handling fees of either fifty dollars (\$50) or up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 11.13 Notwithstanding anything contained in this clause if CPE is required by a law to accept a return then CPE will only accept a return on the conditions imposed by that law.

12. Intellectual Property

- 12.1 Where CPE has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of CPE.
- 12.2 The Customer warrants that all designs, specifications or instructions given to CPE will not cause CPE to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify CPE against any action taken by a third party against CPE in respect of any such infringement.
- 12.3 The Customer agrees that CPE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which CPE has created for the Customer.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CPE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes CPE any money the Customer shall indemnify CPE from and against all costs and disbursements incurred by CPE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CPE's contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies CPE may have under this contract, if a Customer has made payment to CPE, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CPE under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 13.4 Without prejudice to CPE's other remedies at law CPE shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to CPE shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CPE becomes overdue, or in CPE's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by CPE;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 Without prejudice to any other remedies CPE may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions CPE may suspend or terminate the supply of Goods/Equipment to the Customer. CPE will not be liable to the Customer for any loss or damage the Customer suffers because CPE has exercised its rights under this clause.
- 14.2 CPE may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice CPE shall repay to the Customer any money paid by the Customer for the Goods/Equipment. CPE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Customer cancels delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by CPE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Act 1988

- 15.1 The Customer agrees for CPE to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by CPE.

- 15.2 The Customer agrees that CPE may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 15.3 The Customer consents to CPE being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Customer agrees that personal credit information provided may be used and retained by CPE for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 CPE may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
 - (b) name of the credit provider and that CPE is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and CPE has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of CPE, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Customer shall have the right to request (by e-mail) from CPE:
- (a) a copy of the information about the Customer retained by CPE and the right to request that CPE correct any incorrect information; and
 - (b) that CPE does not disclose any personal information about the Customer for the purpose of direct marketing.
- 15.8 CPE will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Customer can make a privacy complaint by contacting CPE via e-mail. CPE will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. Unpaid Seller's Rights**
- 16.1 Where the Customer has left any item with CPE for repair, modification, exchange or for CPE to perform any other service in relation to the item and CPE has not received or been tendered the whole of any moneys owing to it by the Customer, CPE shall have, until all moneys owing to CPE are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 16.2 The lien of CPE shall continue despite the commencement of proceedings, or judgment for any moneys owing to CPE having been obtained against the Customer.
- 17. Equipment Hire**
- 17.1 Equipment shall at all times remain the property of CPE and is returnable on demand by CPE. In the event that Equipment is not returned to CPE in the condition in which it was delivered CPE retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all CPE shall have right to charge the Customer the full cost of replacing the Equipment.
- 17.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by CPE to the Customer.
- 17.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, CPE's interest in the Equipment and agrees to indemnify CPE against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to

property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

18. Trusts

- 18.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not CPE may have notice of the Trust, the Customer covenants with CPE as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of CPE (CPE will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

19. General

- 19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which CPE has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 19.3 Subject to clause 11, CPE shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by CPE of these terms and conditions (alternatively CPE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 19.4 CPE may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 19.5 The Customer cannot licence or assign without the written approval of CPE.
- 19.6 CPE may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of CPE's sub-contractors without the authority of CPE.
- 19.7 The Customer agrees that CPE may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for CPE to provide Goods/Equipment to the Customer.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.