

Terms and Conditions of Trade

1. Definitions

- 1.1. "agreement" means the contract between the Supplier and the Customer for the provision of the Works and incorporating (by inclusion in the agreement or by reference) these Terms.
- 1.2. "Commencement Date" means the date specified in the agreement for the commencement of the Works.
- 1.3. "Completion Date" means the date specified in the agreement for Practical Completion of the Works.
- 1.4. "Customer" means the person/s or any person acting on behalf of and with the written authority of the Customer requesting the Supplier to provide the Works 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.
- 1.5. "Defects Liability Period" means defects liability period specified in the agreement and commencing on the Completion Date.
- 1.6. "Extension of Time" has the meaning given to it in Clause 6.2.
- 1.7. "GST" means Goods and Services Tax (GST) as defined within the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 1.8. "Intellectual Property Rights" means patents, utility models, registered designs and models, trademarks, trade secrets, service marks, copyrights, applications for any of the foregoing and rights to apply for any of the foregoing, ownership of inventions, proprietary information and technical know-how, whether patentable or not, and any similar rights.
- 1.9. "Practical Completion" means the stage in the carrying out and completion of the Works when the Works are complete except for minor defects:
 - a) which do not prevent the Works from being reasonably capable of being used for their stated purpose; and
 - b) the rectification of which will not prejudice the convenient use of the Works;
- 1.10. "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Supplier and the Customer in accordance with clause 5 below.
- 1.11. "Site" means the location where the Works will be carried out by the Supplier.
- 1.12. "Terms" means these terms and conditions.
- 1.13. "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other), as described in the agreement or otherwise agreed between the parties.

2. Acceptance

- 2.1. In the absence of any signed agreement, the Customer is taken to have accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order for any Works.
- 2.2. These Terms 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 agreement between the Customer and the Supplier.
- 2.3. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 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 the Supplier 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 the Supplier in the formation and/or administration of this contract; and/or
- b) contained in/omitted from any document or any other information (hard copy and/or electronic) supplied by the Supplier in respect of the Works.

- 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 the Supplier; 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 the Supplier not less than ten (10) business 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 the Supplier as a result of the Customer's failure to comply with this clause.

5. Price and Payment and Variations

- 5.1. At the Supplier's sole discretion, the Price shall be either:
 - a) as indicated on invoices provided by the Supplier to the Customer in respect of Works performed or Materials supplied; or
 - b) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within fourteen (14) days.
- 5.2. The Supplier reserves the right to change the Price:
 - a) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested and the effect on time for completion and cost, as notified by the Supplier, are approved by the Customer;
 - b) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of Materials, limitations to accessing the site, safety considerations, discovery of asbestos, excavation, prerequisite work by any third party not being completed, obscured building defects, latent defects or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
 - c) in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.
- 5.3. The Customer may give the Supplier a written notice of proposed variation ("Notice of Proposed Variation"). On receiving a Notice of Proposed Variation, the Supplier shall respond by notifying the Customer in writing whether the proposed variation can be effected, and if so, the Supplier's estimate of the:
 - a) description of the nature and extent of the variation;
 - b) effect on the time for completion of the Works (including the Completion Date); and
 - c) costs (including all warranties and time-related costs, if any) of the proposed variation, and how the costs have been estimated, including any quotations and supporting documentation and any allowance for the Supplier's margin or overheads or administration costs
- 5.4. The Supplier may, where the Supplier considers that a variation is necessary (including for convenience), give the Customer a completed Notice of Proposed Variation which must comply with the requirements of clause 5.3 (a), (b) and (c).

- 5.5.** Variations described in clause 5.3 and clause 5.4 will be charged for on the basis of the Supplier's variation quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any estimate of the effect on the time for completion of the Works and cost of the variation submitted by the Supplier within ten (10) business days confirming its acceptance or stipulating the ground for rejection of the Supplier's variation quotation. If the Customer does not accept the Supplier's variation quotation within ten (10) business days, the parties shall enter into good faith negotiations to resolve the need and/or impact of the variation. If the parties are unable to reach a resolution regarding the variation within a further ten (10) business days, either party may elect to terminate the agreement pursuant to clause 21.
- 5.6.** Payment for all variations must be made in full at the time of their completion. The Supplier may require that the Customer provide additional security under clause 16 to cover the cost of approved variations.
- 5.7.** Time for payment for the Works is of the essence, and the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- on completion of the Works; or
 - by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - thirty (30) days following the date of the invoice which is posted to the Customer's address or address for notices;
 - the date specified on any invoice or other form as being the date for payment; or
 - failing any notice to the contrary, the date which is five (5) business days following the date of any invoice given to the Customer by the Supplier.
- 5.8.** Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.
- 5.9.** 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10.** Unless otherwise stated, the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Materials. 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.
- 5.11.** Materials delivered, placed on or adjacent to the Site and intended for use in connection with the Works shall remain the property of the Supplier until the value of such materials and goods have been included in any interim or final payment and the amount has been discharged ("Unfixed Materials") whereupon such Unfixed Materials shall become the property of the Customer. Unfixed Materials delivered to the Site and intended for incorporation in the Works shall not be removed without the Supplier's written consent, whether or not the Unfixed Materials have been included in an interim payment.

6. Provision of the Works and Liquidated Damages

- 6.1.** Subject to clause 6.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible or as determined by the Supplier's supplied and accepted Project Schedule Gantt Chart.
- 6.2.** A party becoming aware of anything which will probably cause delay to the Works shall promptly give the other party written notice of that cause. Within five (5) business days of becoming aware of a probable delay to the Works, the Supplier shall give notice to the Customer that the Commencement Date will be postponed and/or the Completion Date extended by whatever time is reasonable, as determined by the Supplier (each such delay or postponement, an "Extension of Time"). Where the

Supplier gives written notice to the Customer of an Extension of Time due to an event beyond the Supplier's control, including but not limited to any of the following events:

- any failure by the Customer to:
 - make a selection; or
 - have the Site ready for the Works; or
 - notify the Supplier that the Site is ready; or
- any specified Materials necessary for the Works are not available due to State, National or Global supply and demand issues; or
- Force Majeure event (as defined in Clause 27.8) has occurred.

- 6.3.** The parties also acknowledge and agree that the Supplier shall be entitled to give the Customer notice that an Extension of Time event has occurred for any matter relating to COVID-19 that results in, or is likely to result in, the commencement date being postponed and/or the completion date being extended.
- 6.4.** At the Supplier's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price, as shall be notified to the Customer.
- 6.5.** The Supplier may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.
- 6.6.** Any time specified by the Supplier for delivery of the Works is an estimate only and, except as agreed between the parties and provided in these Terms, the Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Works as agreed solely due to any action or inaction of the Customer (including, without limitation, the events described in clause 6.2(a)), then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 6.7.** If an Extension of Time notice is issued after the Supplier has paid or the Customer has set off Liquidated Damages under these Terms, the Customer shall forthwith repay to the Supplier such of those Liquidated Damages as represent the days the subject of the Extension of Time.
- 6.8.** The Customer acknowledges and agrees that the Supplier may make use of subcontractors to deliver the Works.
- 6.9.** The Customer must for the term of this Agreement maintain public liability insurance with a reputable insurer in the amount of not less than \$20 million in respect of each and every claim.

7. Risk

- 7.1.** If the Supplier retains ownership of the Materials under clause 13 then, where the Supplier is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 7.2.** Notwithstanding the provisions of clause 7.1 if the Customer specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at the sole risk of the Customer and it shall be solely the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3.** Where the Customer has supplied materials for the Supplier to complete the Works, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for testing materials supplied by the Customer and shall not be responsible or liable for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

7.4. The Customer acknowledges that the Supplier is only responsible for parts that are repaired by the Supplier, and in the event that other Materials, subsequently fail, the Customer agrees to indemnify the Supplier against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

7.5. Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Materials or Works supplied is given in good faith, is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.

8. Access

8.1. The Customer shall ensure that the Supplier has clear and free access to the Site at all times to enable them to undertake the Works. The Supplier shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

9. Installation

9.1. The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Supplier, its employees or the Supplier's reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then the Supplier shall be entitled to delay installation of the Materials (in accordance with clause 6.2) until the Supplier is satisfied that it is safe for the installation to proceed. The Supplier may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price in accordance with clause 5.2.

9.2. The Supplier shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however the Customer agrees and accepts that the Supplier cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.

9.3. In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved in such relocation.

9.4. The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.

9.5. In the event that any electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify the Supplier immediately upon any proposed changes being agreed. The Customer agrees to indemnify the Supplier against any additional costs incurred as a result of such a relocation of electrical wiring. All such variances shall be agreed and invoiced in accordance with clause 5.2.

10. Intellectual Property Rights

10.1. The Supplier, in providing the Works, shall procure for the benefit of Customer all Intellectual Property Rights that may subsist in the Works necessary to allow:

- a) the use by the Customer of the Works;
- b) the incorporation of the Works; and
- c) the design, installation, commissioning, operation, maintenance, repair of the Works.

10.2. The Supplier grants to the Customer a non-exclusive irrevocable, royalty free licence to all such Intellectual Property Rights held or enjoyed by the Supplier that may subsist in the Works for use in connection with the design, installation,

commissioning, operation, maintenance, repair of the Works and in connection with the incorporation of the Works.

10.3. For the avoidance of doubt, the Intellectual Property Rights granted by the Supplier to the Customer under this clause 10 in no way effects a transfer to the Customer of the Supplier's title to the Intellectual Property Rights owned by the Supplier prior to the date of this agreement or created by the Supplier during the course of the Works.

11. Underground Locations

11.1. Prior to the Supplier commencing any work the Customer must advise the Supplier of the precise location of all underground services on the Site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site.

11.2. Whilst the Supplier will take all care to avoid damage to any underground services, the Supplier will not be liable to the Customer for any damages to services not previously located and notified as per clause 11.1 and the Customer agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Compliance with Laws

12.1. The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

12.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

13. Customer's Responsibilities

13.1. The Customer agrees that:

- a) any building/construction sites will comply with all Western Australia occupational health and safety laws relating to the Site and any other relevant safety standards or legislation;
- b) the Supplier is not responsible for the removal of rubbish from the Site. This is the responsibility of the Customer or the Customer's agent;
- c) it is the Customer's responsibility to:
 - 13.1.c.1. provide the Supplier, while the Supplier is at the Site, with adequate access to available water, toilet and washing facilities; and
 - 13.1.c.2. make the Site available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between the Supplier and the Customer, any additional costs will be invoiced to the Customer as a variation in accordance with clause 5.2; and
 - 13.1.c.3. supply power and lighting for an area of not less than ten (10) metres from the project; and
- d) if the Supplier notifies the Customer that the Supplier intends to store on the Site, materials and articles for use in the Works, the Customer shall designate an area for storage and shall take all reasonable precautions to protect any such materials and articles stored on site from destruction, damage or theft; and
- e) the Customer has ensured that the materials specified and accepted by the Customer are the correct type, size quantity, colour, finish quality and standard, and conform in every detail with the Customer's requirements; and
- f) the Customer has ensured that any specifications, diagrams, drawings and dimensions submitted with the quotation or as amended from time to time, are correct and conform in every detail with the Customer's requirements stated by the Customer to the Supplier; and
- g) any description, specifications, diagrams, drawings and particulars of weights and dimensions submitted with this

quotation are approximate only and do not form part of the agreement; and

- h) the accuracy of specifications, diagrams, plans and drawings are the Customer's exclusive responsibility and the Customer does not rely on the Supplier's skill or judgement in this respect and the Supplier is entitled to rely on such documents but shall not be liable for any consequent error by the Supplier or the consequences of any error thereby arising.
- i) if either party discovers any inconsistency, ambiguity, omissions or discrepancy (each an "Error") in any document prepared for the purpose of carrying out the Works, that party shall give the other party written notice of the Error and the parties shall:
 - 13.1.i.1. at the Customer's cost, agree any amendments to the relevant document necessary to address such Error; and
 - 13.1.i.2. where relevant, according to the nature of the inconsistency, ambiguity, omissions or discrepancy, agree a variation to the Works under clause 5.

14. Title

- 14.1. The Supplier and the Customer agree that ownership of and title to the Materials shall not pass until:
 - a) the Customer has paid the Supplier all amounts owing to the Supplier; and
 - b) the Customer has met all of its other obligations to the Supplier.
- 14.2. Receipt by the Supplier 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.
- 14.3. It is further agreed that:
 - a) until ownership of the Materials passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request.
 - b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - c) the production of these Terms by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries.
 - d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - e) the Customer should not convert or process the Materials 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as the Supplier so directs.
 - f) unless the Materials have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials.
 - g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred.
 - h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Supplier.
 - i) the Supplier may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

15. Personal Property Securities Act 2009 ("PPSA")

- 15.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2. Upon assenting to these Terms in writing the Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 15.3. 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 the Supplier may reasonably require to:
 - 15.3.a.1. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - 15.3.a.2. register any other document required to be registered by the PPSA; or
 - 15.3.a.3. correct a defect in a statement referred to in clause 15.3.a.1 or 15.3.a.2;
 - b) indemnify, and upon demand reimburse, the Supplier 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 Materials charged thereby;
 - c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Supplier; and
 - e) immediately advise the Supplier of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.4. The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 15.5. The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6. The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7. Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8. The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 15.3 to 15.5.
- 15.9. Subject to any express provisions to the contrary (including those contained in this clause 15) nothing in these Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1. **Provision:** In consideration of the Supplier agreeing to supply the Works and Materials, and to secure the performance by the Customer of its obligations under these Terms (including, but not limited to, the payment of any money), the Customer shall:
 - a) provide to the Supplier such amounts of cash or other forms of surety as the parties may agree, in a form satisfactory to the Supplier; and
 - b) charge 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.
- 16.2. Where the Customer is a related or subsidiary corporation (as defined in the *Corporations Act 2001 (Cth)*), at the Supplier's sole discretion, that security provided by the Customer under clause 16.1 shall also include a deed of guarantee provided by the Customer's parent company or ultimate holding company

(as defined in the *Corporations Act 2001 (Cth)*) in a form satisfactory to the Supplier.

- 16.3.** If the amount payable by the Customer under these Terms exceeds the Price due to adjustments in accordance with these Terms, the Supplier may require the Customer to provide additional security. The Supplier is not required to perform any of the Works until such additional security is provided.
- 16.4. Recourse:** The Supplier may have recourse to security:
- where an amount due to the Supplier under these Terms or otherwise remains unpaid after the time for payment; or
 - in respect of any claim of payment (liquidated or otherwise), the Supplier may have, or claim to have, against the Customer under these Terms or otherwise, or
 - on the giving of written notice to the Customer.
- 16.5.** Upon a party's entitlement to security ceasing, that party shall release and return forthwith the security to the other party.
- 16.6. Trusts and interest:** Except where held by a government department or agency or a municipal, public or statutory authority, any portion of Security (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the Supplier or the Customer is entitled to receive them.
- 16.7.** The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 16.8.** The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.
- 16.9.** The provisions of this clause 16 survive the termination or expiration of these Terms.

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

- 17.1.** The Customer must inspect all Materials on delivery (or the Works on completion) and must within five (5) business days of delivery (the "Defect Liability Period") notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the relevant specification in the Works (each a "Defect Notice") and allow the Supplier to inspect the Materials or to review the Works to identify and assess the relevant defect.
- 17.2.** On acceptance of a Defect Notice, the Supplier shall carry out the necessary rectification work as soon as reasonably possible at times and in a manner causing as little inconvenience to the Customer or users of the Works as is reasonably possible.
- 17.3.** 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 ("Non-Excluded Guarantees").
- 17.4.** The Supplier acknowledges that nothing in these Terms purport to modify or exclude the Non-Excluded Guarantees, provided that, the Customer must notify any other alleged defect in the Materials/Works no later than five (5) business days after any such Defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect the Materials or to review the Works provided to identify and assess the defect.
- 17.5.** Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Materials/Works. The Supplier's liability in respect of these warranties is limited by these Terms to the fullest extent permitted by law.
- 17.6.** If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 17.7.** If the Supplier is required to replace any Materials under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Materials.
- 17.8.** If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is

unable to do so, then the Supplier may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.

- 17.9.** If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Materials is:
- limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
 - limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Materials; and
 - otherwise negated absolutely.
- 17.10.** Subject to this clause 17, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 17.1; and
 - the Supplier has agreed that the Materials are defective; and
 - the Materials are returned within five (5) business days of the Supplier providing confirmation that the Materials are defective and such return shall be at the Customer's cost including but not limited to, freight costs; and
 - the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 17.11.** Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain or store any Materials;
 - the Customer using the Materials for any purpose other than that for which they were designed;
 - the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Customer or any third party without the Supplier's prior approval;
 - the Customer failing to follow any instructions or guidelines provided by the Supplier;
 - fair wear and tear, any accident, or act of God.
- 17.12.** In the case of second hand Materials, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier 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 the Supplier has agreed to provide the Customer with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 17.12.
- 17.13.** The Supplier may in its absolute discretion accept non-defective Materials for return in which case the Supplier may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Materials plus any freight costs.
- 17.14.** Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return of non-defective Materials, then the Supplier will only accept a return on the conditions imposed by that law.

18. Liability and Indemnity

- 18.1.** Subject to clauses 6.7 and 17, the Supplier 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 the Supplier of the agreement or these Terms. In any event, the Supplier's total liability under this agreement or these Terms shall under no circumstances exceed an amount equal to fifty percent (50%) the Price of the Works.
- 18.2.** The Customer agrees that it shall defend, indemnify and hold harmless the Supplier, its personnel, representatives and its affiliates (the "Indemnified Persons") from and against any and

all claims, damages, liabilities, losses (including any loss of, or damage to, any property of, or injury to or death of, any person) and expenses of any kind whatsoever (including but not limited to, the costs in connection with defending against any of the foregoing or in enforcing this indemnity and any internal administration fees, reasonable legal costs, the Supplier's contract default fee, and bank dishonour fees) incurred or suffered by an Indemnified Person arising from or in connection with any wilful or negligent act or omission by the Customer or its personnel, representatives or subcontractors and/or any breach by the Customer of the agreement, these Terms or applicable laws or arising directly or indirectly out of the performance by the Customer of its obligations under the agreement or these Terms.

18.3. Further to any other rights or remedies the Supplier may have under the agreement or these Terms, if a Customer has made payment to the Supplier, 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 the Supplier under this clause 18 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.

19. Latent Conditions

19.1. Latent conditions are physical conditions on the site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should have been reasonably anticipated by a competent Supplier at the time of the Supplier's tender following an inspection by the Supplier of:

- a) all written information made available to Supplier by the Customer for the purpose of tendering;
- b) all information influencing the risk allocation in the Supplier's tender and reasonably obtainable by the making of reasonable enquiries; and
- c) the site and its near surrounds.

19.2. Within ten (10) business days after becoming aware of a latent condition while carrying out Works, and where possible before the latent condition is disturbed, the Supplier shall give the Customer a written statement of:

- a) the latent condition encountered and the respects in which it differs materially; and
- b) the additional work, resources, time and cost which the Supplier estimates to be necessary to deal with the latent condition.

19.3. If the Supplier fails to notify the Customer in accordance with clause 19.2, the Supplier shall not be entitled to any claim in connection with the latent condition.

19.4. Subject to the Supplier's compliance with clause 19.2, the effect of the latent condition shall be that the Supplier is entitled to give the Customer notice of variation in accordance with clause 5.

20. Default and Consequences of Default

20.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, at a rate of two and a half percent (2.5%) per calendar month until payment (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- a) any money payable to the Supplier becomes overdue, or in the Supplier'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 the Supplier;
- c) the Customer fails to give the Supplier notice of a change of control under clause 4.1;
- d) the Customer becomes insolvent or bankrupt, 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

- e) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21. Cancellation

21.1. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these Terms, the Supplier may suspend or terminate the supply of Works to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

21.2. The Supplier may cancel the agreement or cancel delivery of the Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice, the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Works already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.3. In the event that the Customer cancels the delivery of the Works, the Customer shall be liable for any and all losses incurred (whether direct or indirect) by the Supplier as a result of the cancellation (including, but not limited to, any loss of profits).

21.4. Subject to clause 5.5, the parties may agree to cancel the agreement or cancel delivery of the Works, if a party issues a Notice of Variation under clause 5 that is not accepted by the other party and the parties are unable to reach a good faith practical resolution on the variation within ten (10) business days.

21.5. Cancellation of orders for products 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.

22. Privacy Act 1988

22.1. The Customer consents to the Supplier obtaining from a credit reporting body ("CRB") a credit report containing personal credit information (e.g. name, address, date of birth, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.

22.2. The Customer agrees that the Supplier 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 years.

22.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

22.4. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):

- a) the provision of Works; and/or
- b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; 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 Works.

22.5. The Supplier 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.

22.6. The information given to the CRB may include:

- a) personal information as outlined in 22.1 above;
- b) name of the credit provider and that the Supplier 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 the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- g) information that, in the opinion of the Supplier, 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).

22.7. The Customer shall have the right to request (by e-mail) from the Supplier:

- a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
- b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.

22.8. The Supplier 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 agreement or is required to be maintained and/or stored in accordance with the law.

22.9. The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within five (5) business 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

23. No Poaching of Employees

23.1. Solicitation for Employment - The parties agree that neither party and their associated/ related entities, sub-contractors or their employees will employ or approach for employment our employees from the Supplier during the term and until a minimum period of one month following the written notification of the termination of this agreement. In case of breach there will be a minimum 6 months repayment of standard wages of 38 hours per week for the poached employee as a compensation to the Supplier.

24. Construction Contracts Act 2004

24.1. At the Supplier's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials (each a "Dispute") then the provisions of the Construction Contracts Act 2004 (the "Act") may apply.

24.2. Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

24.3. Prior to initiating action under the terms of the Act to resolve a Dispute, upon the written request of either party, the parties shall arrange for their respective senior representatives to meet within thirty (30) days for the purpose of resolving such Dispute on amicable terms. No proceedings may be commenced under this clause 24 until the earlier of (i) at least ten (10) business days after such meeting, and (ii) a party's senior representative communicates to the other party his or

her good faith conclusion that an amicable resolution of the matter is unlikely. Any discussions undertaken pursuant to this clause shall be confidential and comprise settlement negotiations undertaken without prejudice to any party's right to any other remedy in law or equity or under this agreement.

25. Service of Notices

25.1. Any written notice given under this contract shall be deemed to have been given and received:

- a) by handing the notice to the other party, in person;
- b) by leaving it at the address of the other party as stated in this contract;
- c) by sending it by registered post to the address of the other party as stated in this contract; or
- d) if sent by email to the other party's last known email address.

25.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

26. Trusts

26.1. If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier 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 the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - 26.1.c.1. the removal, replacement or retirement of the Customer as trustee of the Trust;
 - 26.1.c.2. any alteration to or variation of the terms of the Trust;
 - 26.1.c.3. any advancement or distribution of capital of the Trust; or
 - 26.1.c.4. any resettlement of the trust property.

27. General

27.1. The failure by either party to enforce any provision of these Terms 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 shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

27.2. These Terms and any contract to which they apply shall be governed by the laws of Western Australia in which the Supplier has its principal place of business and are subject to the jurisdiction of the Kalgoorlie Courts in Western Australia.

27.3. The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

27.4. The Customer cannot licence or assign without the prior written approval of the Supplier.

27.5. The Supplier may elect to subcontract out any part of the Works 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 the Supplier's sub-contractors without the prior written authority of the Supplier.

27.6. Neither party shall be liable for any default due to any act of God, war **and its effect**, terrorism, strike, lock-out, industrial action, fire, flood, storm, **material delays, material shortages, Petrol/Diesel shortages, epidemics, pandemic event**

declared by a local, state, and/or federal authority, quarantine restrictions, inclement weather, or other event beyond the reasonable control of either party (each a "Force Majeure" event).

- 27.7. 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.
- 27.8. This contract is the entire agreement and understanding between the parties on everything connect with its subject matter, and supersedes any prior agreement or understanding on anything connected with that subject matter.

28. COVID-19

- 28.1. The parties acknowledge and agree that if a change in a Legislative Requirement relates to the COVID-19 Pandemic and that Legislative Requirement or effects of that Legislative Requirement qualify as a COVID-19 Pandemic Event, the customer has no entitlement for relief in respect of that change in Legislative Requirement and its effects under this agreement.

Standard Terms and Conditions for the Commercial Hire of Pumps

Recitals:

- R1. The owner is the proprietor of the plant and equipment ("equipment") ABBA Engineering .
- R2. The hirer will hire the equipment specified in the schedule from the owner upon the Terms as requested verbally or in writing.

Operative Part:

1. Hire of plant and equipment

- 1.1. The hiring of the equipment will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.
- 1.2. The hirer is entitled to use the equipment for the hire period and for any extension of the period as agreed in writing.
- 1.3. The hirer agrees to return the goods to the address of the owner on or before the end of the hire period as outlined in the schedule.
- 1.4. The owner will not refund any hire charge monies if the hirer elects to return the equipment prior to the end of the hire period, regardless of reason.

2. Payment for rental

- 2.1. The hirer agrees to pay the owner the hire fee specified in the schedule for the equipment for the hire period, which includes any applicable GST, if a hire charge is applicable.
- 2.2. The hire fee must be paid to the owner prior to or on the commencement date of the hire period.

3. Use, operation and maintenance

- 3.1. The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks. The owner shall bear no responsibility or liability for any damage (including personal injury) incurred by the hirer or any other person as a result of using the equipment.
- 3.2. The equipment shall not be used by anyone other than the hirer without the expressed written permission of the owner.
- 3.3. The hirer agrees to operate, maintain and store the equipment strictly in accordance with any instruction provided by the owner, with due care and diligence, only for its intended use and in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment as to the operations, maintenance and storage thereof.
- 3.4. The hirer agrees to comply with all occupational health and safety laws relating to the use of the equipment and related operations.
- 3.5. The hirer shall ensure the equipment is returned to the owner clean of soil or any other foreign matter and any spray tanks

and spray equipment shall be thoroughly cleaned. Fuel tanks on any equipment shall be full of fuel when the equipment is returned to the owner. In the event that these requirements are not complied with the hirer shall pay the owner the reasonable costs of compliance with these requirements.

- 3.6. Equipment is designed for clean water applications and as such is not designed to pump solids (suspended or otherwise) unless stated to the contrary. Damage to the equipment caused by operating equipment outside acceptable ranges or in contravention of the standard terms is chargeable to the customer.
- 3.7. An environmental levy will be charged on all equipment hire rates. Such levy will be charged at a rate of \$5.32 per day of the hire period.

4. Hirer's warranties

- 4.1. The hirer warrants that:
- The equipment will be used in accordance with the conditions outlined in the schedule;
 - The particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - The hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
 - The equipment will not be used for any illegal purpose;
 - The hirer's vehicle is suitable for towing the equipment;
 - The hirer will not, without prior written consent of the owner, modify, or permit any modification of, the equipment in any way;
 - The hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose; and
 - The hirer will maintain and service the equipment on a regular basis.

5. Indemnity

- 5.1. To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.

6. Loss, damage or breakdown of plant and equipment

- 6.1. The hirer will be responsible for any loss or damage to the equipment irrespective of how the loss is incurred or the damage occurred (fair wear and tear excepted) during the hire period.
- 6.2. In the event of a breakdown or failure of the equipment, due to misuse by the hirer, then the hirer is liable for all repairs and maintenance.
- 6.3. The hirer will continue to be charged the day rate until any repairs are completed and the equipment is ready to rehire.
- 6.4. The hirer will be charged the day rate until any repairs are completed and the equipment is ready to rehire. During the contract term, age related deterioration of the equipment will naturally occur, this is known as "Fair Wear and Tear". The hirer is financially responsible for the repair or make good costs if the equipment is returned with an unreasonable level of wear and tear at the end of the rental period. If excessive wear and tear is found during off hire inspections. The hirer will be charged for repairs required.

7. Insurance

- 7.1. The hirer will arrange insurance to cover the equipment to its full insurable value before commencement date and equipment pick up.
- 7.2. A copy of the insurance policy must be provided to and approved by ABBA Engineering prior to equipment pick up.

8. Liability

- 8.1. The hirer will assume all risks and liabilities for and in respect of the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair or storage of the equipment.

8.2. The hirer must defend, indemnify and hold the owner and its representatives, successors and assigns (“Indemnified Parties”) harmless from and against any and all losses arising directly or indirectly from or in connections with:

- a) Death of, or bodily injury to, persons connected with an act or omission of the hirer or any persons connected with the hirer;
- b) Loss of, or damage to, tangible property connected with an act or omission of the hirer or any persons connected with the hirer;
- c) The wilful misconduct, fraud or fraudulent misrepresentation of the hirer or any persons connected with the hirer;
- d) The negligent acts or omissions of the hirer or any persons connected with the hirer;
- e) A breach of any of the hirer’s warranties given in this contract or obligations under this contract; and
- f) A breach of the hirer of any applicable laws,

except to the extent that any such loss arises directly due to an act or omission of the Indemnified Parties.

8.3. Neither party will be responsible for any consequential loss (including loss of profits) arising out of or in connection with this contract. The foregoing does not apply to the extent that the consequential loss is caused or contributed to by an unlawful act, fraud or wilful misconduct of a party or is capable of recovery under any policy of insurance (or would have been capable of recovery but for the breach of, or failure to maintain, such policy.

9. Disclaimer

9.1. To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

10. Title to goods

10.1. The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer does not have any right to pledge the owner’s credit in connection with the goods and agrees not to do so.

10.2. The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, or repair of, the equipment.

11. Repossession

11.1. The owner may retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.

11.2. If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.

12. Completion of the hire period

12.1. The hire period is completed when the equipment has been returned to the owner:

- a) in the same condition as when it was hired; and
- b) on or by the date and time outlined in the schedule.

13. Non-merger

13.1. The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

14. Severance

14.1. If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

15. Governing law

15.1. This agreement is governed by the laws of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this agreement.

16. Interpretation

16.1. In this agreement, unless the context otherwise requires:

- a) A reference to the singular includes the plural and vice versa;
- b) A reference to any party to this agreement includes the party’s executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;
- c) A reference to an individual shall include corporations and vice versa; and
- d) If a word or expression is defined, its other grammatical forms have a corresponding meaning.

16.2. In this agreement, headings are for convenience only and do not affect interpretation.

17. Fair Wear and Tear Guide

17.1. The pump shall be returned in a safe, and reliable mechanical condition, capable of passing the relevant thorough examination under the ABBA Engineering Off hire procedure.

17.2. Uprights, Engine, Pump, skid, trailer (if applicable), must be in good running order and free from any operational defects.

17.3. There must be no impact damage to chassis, trailer and skid, all welds must be intact and free from cracks.

17.4. Minor scrapes/scratches to paintwork are accepted.

17.5. Canopies must be intact, including all roll up sides. They must be free from damage.

17.6. All components must be free of oil, fuel or coolant Leaks, all fluids must be above minimum level mark and free from contamination.

17.7. Exhaust tail pipe must be secure and free from impact damage.

17.8. All items must be present, in working displays and order and free from defects.

17.9. Gauges must be in working order.

17.10. Control panel enclosure must be free of damage, straight and hinges work correctly.

17.11. Starter Batteries must be suitable for the equipment and capable of starting the engine from cold and the cell electrolyte must be above the minimum level.

17.12. All electrical components must be present and functional. If replacements have been fitted, due to damage, they must be of a directly equivalent specification.

17.13. All lights must be operational. Brackets must not be distorted or damaged.

17.14. Tyre’s condition must have a good tread on them. They must be free from cuts, gouges, and any other damage. Tyres must have no splits, flat spots, uneven wear, or Condition chunks missing, (caused by wheel spin / skidding, operating over inappropriate surfaces / terrain).

17.15. Frame/Chassis Frame, panels, paintwork must be free of impact damage, clean, with no scrapes / writing / graffiti / labels. It is accepted that due to site conditions and exposure to the elements that paint work may fade over the period of the hire / lease.

17.16. Additional Equipment supplied (suction hoses, strainers, manifolds) must be in good condition, complete and fully functional.

17.17. All valving must be in working condition.

17.18. Service history if carried out by the hirer must be provided when requested.

17.19. Stabiliser legs must be free from damage, free moving, with all lock pins free and in good working condition