



**GENERAL TERMS AND CONDITIONS OF CONTRACT**  
**GENERAL CONDITIONS OF HIRE**

**1. DEFINITIONS**

"The Company" means;

**In VIC/NSW/QLD** - Cool Breeze Rentals Pty Ltd As Trustee for the Cool Breeze Rentals Unit Trust ABN 92 648 220 418;

**IN SA** - Cool Breeze Rentals (SA) Pty Ltd ABN 53 160 305 019;

**IN WA** - Cool Breeze Rentals (WA) Pty Ltd ABN 55 160 305 028;

or any agent, business or subsidiary of the Company agrees to hire the Equipment to the Hirer (hereinafter called "the Hirer") and the Hirer agrees to accept the hiring in accordance with the terms and conditions of this Hire Agreement. The expressed and implied definition of the Equipment shall be all those items as specified under "Equipment".

**2. HIRE AGREEMENT**

Prior to the execution of this Hire Agreement the Hirer covenants and agrees with the Company that the Hirer has thoroughly examined the Equipment and is satisfied of its condition and suitability of purpose, that the Hirer has read and understood the operating instructions.

**3. LIABILITIES**

**a)** The Company, its employees, agents, servants and Contractors shall not be responsible for or incur any liability whatsoever in respect of any loss (including loss of profits), damage, injury or death (whether to persons or property) or breach of statutory duty caused by or arising out of in consequence of either the hire of the equipment by the Hirer or any act of omission or default whether negligent or reckless of the Company, its servants, agents or Contractors.

**b)** Except for such conditions and warranties as are required by law no condition, warranty or representation is given by the Company whether in relation to the condition, quality, safety or suitability of the equipment and any express or implied condition is hereby excluded to the maximum extent permitted by law.

**4. HIRERS' OBLIGATIONS**

**a)** The Hirer hereby covenants and agrees to indemnify and save harmless the Company from all claims, demands, rights, causes of action, loss or costs incurred by the Company, caused by arising out of or in consequence of the hire of Equipment by the Hirer.

**b)** The Equipment shall remain personal property and shall not be deemed real property by reason of being attached to any premises. The Hirer shall not remove or cause or permit to be removed from the Equipment any plate or marking put on the Equipment by the Company. The Hirer shall notify the Company in writing of its intention to vacate the premises at least 30 days prior to vacation.

**c)** Where the Company exchanges the Equipment this Hire Agreement shall apply in all respects to the exchanged Equipment.

**d)** The Hirer covenants and agrees with the Company as follows:

**i)** All Equipment returned in an unclean condition will incur cleaning costs to the account of the Hirer.

**ii)** To keep the Equipment under the Hirer's personal control and not to purport to sell, dispose or encumber the same.

**iii)** Time shall be of the essence of the Hirer's obligation pursuant to this Hire Agreement and no waiver by the Company of any breach of this Hire Agreement shall be waiver of a continuing or recurring breach.

**iv)** Any person executing this Hire Agreement on behalf of a Hirer shall be deemed to have authority to bind the Hirer and the Hirer shall be stopped from denying such authority.

**v)** The interest of the Company in and to the Equipment is a legal interest

**e)** If one or more of the following events occurs, the Company, without limiting its other rights, is entitled to the immediate return of the Equipment and to terminate the Hire Agreement where:

- i)** The Hirer makes default in the punctual payment of any rental and other amounts payable pursuant to this Hire Agreement and/or otherwise defaults in the observance or performance of any of the terms and conditions of this Hire Agreement.
  - ii)** The Hirer does or causes to be done any act matter or thing likely to endanger the safety, condition or safekeeping of the Equipment.
  - iii)** Where the Hirer is a natural person, an order is made for the sequestration of assets of the Hirer or where the Hirer is a company, receiver or receiver manager or liquidator or official manager or administrator is appointed over it or its affairs or where the Hirer enters into any composition or arrangement with its creditor or whether any other event occurs which constitutes or evidences on the Hirer's part a repudiation or refusal to be bound by this Hire Agreement.
- f)** The Hirer acknowledges its responsibility to obtain all requisite approvals under legislation or laws in relation to the placing of the Equipment at the premises.
- g)** This Hire Agreement is personal to the Hirer and so the Hirer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by the Company in writing.
- h)** The Hirer agrees that before accepting the Equipment, the Hirer is satisfied as to the suitability, condition and fitness for purpose of the Equipment for the job the Hirer intends to use it for. Subject to Clause 3, the Company makes no representations and gives no guarantee or warranty that the Equipment is suitable for the Hirer's intended purpose.
- i)** To help the Hirer stay safe during the Hire period, the Hirer and its employees, agents and contractors must:
- i)** operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - ii)** ensure persons operating, erecting or installing the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to Perform High Risk Work;
  - iii)** wear suitable clothing and protective Equipment when operating the Equipment as required or recommended by the Company or the manufacturer;
  - iv)** ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
  - v)** conduct a job safety analysis prior to using the Equipment;
  - vi)** ensure that no persons carry illegal, prohibited or dangerous substances in the vicinity of the Equipment; and
  - vii)** display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by the operators of the Equipment.
- j)** It is important to take care of the Equipment during the Hire Period. You must:
- i)** clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and the Company's instructions at the Hirer's own cost;
  - ii)** not in any way alter, modify, tamper with, damage or repair the Equipment without the Company's prior written consent;
  - iii)** not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information on the Equipment.
- k)** At all times during the Hire Period, the Hirer must store the Equipment safely and securely and protected from theft, seizure, loss or damage.
- l)** The Hirer will allow the Company to enter the Hirer's premises and inspect the Equipment from time to time during the Hire Period. The Hirer can also request to conduct a joint inspection of the Equipment with the Company at the end of the Hire Period.
- m)** Whenever the Hirer is moving the Equipment, the Hirer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Hirer (or any contractor the Hirer engages) must observe any safety directions advised by the Company and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- n)** The Hirer must not remove the Equipment from the State or Territory in which the Hirer has hired it without the Company's written consent.
- o)** The Hirer must not use the Equipment off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without the Company's prior written consent, which may be reasonably withheld.
- p)** The Hirer warrants that the Hirer will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- q)** The Hirer must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 4.(o), the Hirer must advise the

Company of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, the Hirer must effectively decontaminate the Equipment, as well as provide the Company with written details of the decontamination processes applied. If, in the Company's opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, the Hirer will be charged for the new replacement cost of the Equipment.

**r)** Any electrical Equipment provided by the Company will be tested and tagged before it is hired to the Hirer, but the Hirer is responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements as the Hirer's cost. We are able to arrange for such re-testing and re-tagging of the electrical Equipment at the Hirer's cost. Except where the Company arranges for re-testing and re-tagging of the electrical Equipment, any damage caused to the Equipment resulting from incorrect testing arranged by the Hirer will be at the Hirer's cost.

**s)** If, at the Hirer's request, the Company supplies an operator to operate the Equipment:

**i)** the operator will be under the Hirer's direction and control during the Hire Period and will comply with the Hirer's reasonable directions;

**ii)** the Company will not, while the operator is working under the Hirer's direction and control in accordance with clause 4.(s).i, seek to direct or supervise any of the work undertaken by operator;

**iii)** the Company will not be liable to the Hirer for any acts or omissions of the operator where they are acting under the Hirer's direction and control during the Hire Period; and

**iv)** the Hirer will not allow any other person to operate the Equipment without the Company's prior written consent.

**t)** The Hirer is responsible for the Equipment for the Period of Hire.

**u)** The Hirer must return the Equipment to the Company in the same clean condition and good working order it was in when the Hirer received it, ordinary fair wear and tear excluded. If the Hirer does not properly clean the Equipment, the Company will charge the Hirer a cleaning cost in accordance with clause 6.(e).vi.

**v)** Except in the circumstances set out in clause 4.(w) below, it is the Hirer's responsibility to return the Equipment in good working condition to the branch the Hirer hired it from during normal business hours.

**w)** If the Hirer has requested, and the Company has agreed, to collect the Equipment from the Hirer, the Hirer must ensure it is kept safe and secure until the time of collection.

**x)** In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Hirer must:

**i)** immediately stop using the Equipment and notify the Company;

**ii)** take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

**iii)** take all steps necessary to prevent any further damage to the Equipment itself; and

**iv)** not repair or attempt to repair the Equipment without the Company's written consent.

**y)** Except if clause 4.(z) applies, upon receiving notice from the Hirer under clause 4.(u) the Company will:

**i)** take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Hirer; and

**ii)** not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

**z)** If the Equipment has broken down or become unsafe to use as a result of the Hirer's negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the Hirer will be liable for:

**i)** any costs incurred by the Company to recover and repair or replace the Equipment; and

**ii)** the hire charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.

**aa)** Provided that the Hirer pays the costs and charges described in clause 4.(z), the Company will return the Equipment to the Hirer once it has been repaired or replaced, and the Hirer will continue to pay the hire charges for the remainder of the Hire Period.

## **5. PAYMENT IN ADVANCE**

**a)** The Hirer will pay a Payment in Advance if and when required by the Company. No Equipment will be supplied until the Payment in Advance is received.

b) As a condition of the Hire Agreement, the Company may at any time during the "Hire Period" require additional Payment/s in Advance to be provided by the Hirer to cover the ongoing hire of Equipment and related charges.

#### **6. HIRE CHARGES**

- a) Rates are based on a 24 hour period and hire charges shall continue to accrue over the weekends and public holidays. The Hirer will be liable for payment of the full hire charge for any hire that extends into the subsequent 24-hour period.
- b) The minimum Hire Period shall be one day (24 hours). Time out is charged, not time used.
- c) The "Period of Hire" shall:
- i) commence from the delivery date and time shown on the Delivery/Pick-Up Docket; or
  - ii) the date and time Equipment is delivered to the Hirer, whichever is the later.
- d) The "Period of Hire" shall cease:
- i) when the Equipment is returned to the Company (either on the date and at the time specified on the Delivery/Pick-Up Docket); or
  - ii) on the Company repossessing the Equipment pursuant to Condition 4(e) of the Conditions of Hire.
- e) In addition to the Hire Charges, the Hirer shall pay to the Company:
- i) the amount of any tax, duty, levy, charge or other expense paid or payable by the Company to any Government or Government Authority in respect to the use or hire of the Equipment.
  - ii) the Company standard delivery and collection charges as detailed in the Hire Agreement.
  - iii) any expenses incurred by the Company as a result of breach by the Hirer of its obligation pursuant to those terms and conditions, in accordance with clause 6 of these terms and conditions.
  - iv) any accessories, consumables, fuel or trade materials the Company supplies to the Hirer as detailed in the Hire Agreement.
  - v) any installation or de-commissioning charges as detailed in the Hire Agreement.
  - vi) if the Hirer does not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment.
  - vii) charges for payment made by credit card, as detailed in the Hire Agreement.
  - viii) an environmental charge in relation to any item of Equipment, as detailed in the Hire Agreement.
  - (ix) if the Hirer requests operational guidance or training on the use of the Equipment and the Company's staff are available to provide this, the cost for the provision of these services at rates agreed with the Company.

#### **7. DAMAGED, LOST OR STOLEN EQUIPMENT AND ASSOCIATED ACCESSORIES**

- a) All Equipment and associated accessories supplied to the Hirer is to be returned in the condition supplied. If Equipment and associated accessories are returned damaged due to negligence or in an excessively dirty condition, if applicable any rectification costs, including GST will be advised and charged to your account accordingly. Theft, loss or damage beyond economic repair of Equipment and associated accessories will incur additional charges equivalent to the wholesale selling price, including GST. These charges will be advised and charged to your account accordingly.
- b) If the Hirer loses the Equipment and/or associated accessories, the hire charges will be continued until the Company receives written notification from the Hirer that the Equipment is lost or stolen. The Hirer acknowledges they will be charged the wholesale selling price, including GST, governing at the time of loss.
- c) No subsequent return of the damaged, lost or stolen Equipment and/or associated accessories will be accepted.

#### **8. PAYMENT TERMS**

Unless otherwise agreed to in writing, the terms of payment are as follows:

- a) The Company's usual credit terms apply to those Hirer's who have a trading account with the Company
- b) For Hirer's who do not have a trading account, a cash or credit card Payment in Advance covering the anticipated hire fee and any additional charges (delivery, pick-up, installation etc) including GST will be required. All outstanding fees and charges payable under this Contract must be paid upon termination of Hire.
- c) Credit claims will only be recognised if made within seven (7) days of the date of invoice to which the claim refers. Claims outside this period will be at the absolute discretion of the Company, and such decision is final and binding on the Hirer.

- d) The Hirer undertakes to pay the account in full on or before the due date. In default of such prompt payment, the Hirer undertakes to pay late payment fees of 2.0% per month on any amount outstanding and to indemnify the Company and pay all costs and expenses on a solicitor and own client basis if legal action is necessary, and/or collection agency fees, which the Company may incur in recovering from the Hirer any overdue amount.
- e) The Hirer authorises the Company to give information as may be required in response to credit inquiries in accordance with the Privacy Act 1988.

#### **9. GOODS AND SERVICES TAX (GST)**

All prices are inclusive of GST unless expressly stated otherwise.

#### **10. REMEMBER, WE OWN THE EQUIPMENT**

- a) You acknowledge that the Company owns the Equipment and in all circumstances the Company retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period). The Hirer's rights to use the Equipment are as a bailee only.
- b) Except in the circumstances set out in clause 11, the Hirer is not entitled to offer, sell, assign, sublet, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- c) In no circumstances will the Equipment be deemed to be a fixture.

#### **11. PERSONAL PROPERTY SECURITIES ACT (PPSA)**

The PPSA and any other legislation and regulations in respect of it and the following words noted within this document have the respective meanings given to them in the PPSA; collateral, financing change statement, financing statement, grantor, interested person, proceeds, purchase money security interest, register, registration, security agreement, security interest and verification statement.

- a) The Hirer consents to the Company affecting and maintaining a registration on the register (in any manner considered appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and agree to sign any documents and provide all assistance and information as required to facilitate the registration and maintenance of any security interest. The Company may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Hirer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.
- b) The Hirer undertakes to do anything (in each case, including executing any new document or providing any information) that is required by the Company;
  - i) to acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds
  - ii) to register a financing statement or financing charge statement
  - iii) to ensure that the Company security position, and rights and obligations, are not adversely affected by the PPSA;
- c) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without the Company's prior written consent; and
- d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the Company's prior written consent.
- e) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and;
  - i) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer will have no rights under them; section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; and section 143; and
  - ii) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer will have no rights under them; section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3),(4) and (5) and section 137.
- f) Unless otherwise agreed and to the extent permitted by the PPSA, the Hirer and the Company agree not to disclose information of the kind referred to in section 127(1) of the PPSA to an interested person, or any other person requested by an interested person. The Hirer waives any right, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

- g)** For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by the Company to the Hirer from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.
- h)** The Company may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way the Company determines in its absolute discretion.
- i)** The Company may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- j)** The Hirer agrees to notify the Company in writing of any change to the Hirer's details set out in the Credit Application, within five (5) days from the date of such change.

## **12. VARIATION**

From time to time, the Company may need to vary this Hire Agreement. If the Company intended to do so, the Company will give the Hirer thirty (30) days written notice and clearly set out the Company's proposed amendments. If the Hirer has reasonable grounds to believe the change will be detrimental to the Hirer's rights, the Hirer may terminate this Hire Agreement without penalty within thirty (30) days of receiving the Company's written notice. Any other variation to these terms and conditions must be agreed to in writing by the Hirer and the Company.

## **13. REVIEW OF YOUR CREDIT APPROVAL**

- a)** From time to time the Company may review any Credit Account the Company has granted to the Hirer without notice.
- b)** The Company may, at the Company's discretion, decide to withdraw credit for any reason, including but not limited to, the Hirer's circumstances changing, the Hirer fails to make payments on time or the Hirer fails to use the Equipment in accordance with the terms of the Hire Agreement.
- c)** If the Company withdraws credit the Hirer may terminate this Hire Agreement immediately by giving the Company written notice. However, if the Hirer does so the Hirer must:
- i)** pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
  - ii)** still pay all amounts due to the Company under this Hire Agreement, including hire charges until the Equipment is back in the Company's custody and possession.

## **14. SIGNING THIS HIRE AGREEMENT**

- a)** The person signing any document which forms part of the Hire Agreement for and on behalf of the Hirer hereby warrants that he or she has the Hirer's authority to enter into the Hire Agreement on the Hirer's behalf and grant the security interests in connection with it and is empowered to bind the Hirer to the Hire Agreement and each security interest granted in connection with it.
- b)** The person signing this Hire Agreement indemnifies the Company against all losses, costs and claims incurred by the Company arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

## **15. CLAIM FOR PAYMENT**

This Hire Agreement is a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry Security of Payment Act 2002 (VIC), the Building and Construction Industry Payments Act 2004 (QLD), the Building and Construction Industry Security of Payment Act 2009 (SA), the Construction Contracts Act 2004 (WA), the Building and Construction Industry (Security of Payment) Act 2009 (ACT), the Building and Construction Industry Security of Payment Act 2009 (TAS), and/or the Construction Contracts (Security of Payments) Act 2009 (NT).

## **16. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND/OR DEFECTIVE CONDITION**

If the Hirer collects or receives the Equipment (whichever is applicable) and finds that it is broken, damaged and/or defective, the Hirer must notify the Company within 24 hours after the Hirer collects or receives the Equipment. If the Hirer does not notify the Company within this time period, the Company is entitled to assume that the Equipment the Hirer collected or received was in good order and condition.



**GENERAL TERMS AND CONDITIONS OF CONTRACT**  
**GENERAL CONDITIONS OF SALE**

**1. DEFINITIONS**

These conditions of Sale ("Conditions") apply to any sale between "The Company" defined as;

**In VIC/NSW/QLD** - Cool Breeze Rentals Pty Ltd As Trustee for the Cool Breeze Rentals Unit Trust ABN 92 648 220 418;

**IN SA** - Cool Breeze Rentals (SA) Pty Ltd ABN 53 160 305 019;

**IN WA** - Cool Breeze Rentals (WA) Pty Ltd ABN 55 160 305 028;

Its Agents or Associated entities, and the company, form or person with whom the Company contracts ("the Customer")

**2. SALE AGREEMENT**

- a) The Company's Sale Agreement is an offer only and no order placed with the Company pursuant to that offer or otherwise shall be binding on the Company unless and until such order is accepted by the Company.
- b) All the terms of the sale between the Company and the Customer are set out in these Conditions and on the face of the Company's Sale Agreement, or the reverse of the Company's delivery dockets provided always that the Company reserves the right to correct any clerical errors at any time. Verbal undertakings given by any member of the Company will not bind the Company unless subsequently confirmed in writing by the Company.
- c) These Conditions shall apply to appropriate charges to any Equipment supplied by the Company and shall also apply in connection with the Equipment sold and whether or not expressly mentioned in the Sale and whether supplied or done at the same time as the Equipment or works specified in the Contract or at any other time.

**3. WARRANTY**

- a) No warranty is given or implied as to the fitness of goods for any particular purpose, whether the Company knows such purpose or not.
- b) Other than in the case where a manufacturer's warranty, the benefit of which can be passed on by the Company to the Customer pursuant to Condition c) applies, the Company makes no representation and gives no warranty whatsoever in respect of any goods sold or supplied by it.
- c) In respect of any goods not manufactured by the Company the Customer shall be entitled to the benefit of the warranty (if any) given by the manufacturer of the goods subject to the terms of such warranty (if any) and to the extent that it is possible to make available to the Customer the said benefit.
- d) It is a condition precedent to the passing on the benefit of any such manufacturer's warranty to a Customer of the Company that the Customer has duly paid all sums due and payable by the Customer to the Company under the Contract.
- e) The Company does not warrant the efficiency of the design of the goods if the goods are to be manufactured in accordance with the Customer's specifications nor does the Company warrant the suitability of materials if the Customer selects such materials. The Customer warrants that the specified capacity and performance of the goods will be sufficient and suitable for its purposes.
- f) Unless otherwise expressly stated in the Contract, any figures or statements as to the performance of the goods referred to in the Contract or any other goods are approximate only and the Company is not under any absolute obligation to supply goods which achieves or complies with any such figures or statements. Any figures given for performance are based upon the Company's experience, and are such as the Company expects to obtain on testing the goods, but liability will only be accepted for failure to obtain the figures given when the Company expressly in writing warrants such performance within specified margins.

- g) The Customer shall inspect the goods on delivery and shall within five (5) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the Proposal. The Customer shall afford the Company an opportunity to inspect the goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- h) For defective Goods which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:
- i) the Customer has complied with the provisions of clause 3(g);
  - ii) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date;
  - iii) the Company will not be liable for Goods which have not been stored or used in a proper manner;
  - iv) the Goods are returned in the condition in which they were delivered.
- i) If express provision is made in the Proposal for the Company to warrant any such figures or statements then in the event of the Company failing to supply goods which achieves or complies with such figures or statements the Company shall be entitled to a reasonable period of time and access to reasonable facilities to enable it to bring the goods up to the warranted standard.

#### **4. LIABILITIES**

- a) Without in any way limiting the generality of the foregoing the Company disclaims all liability for any consequential loss or damage and all Conditions or warranties as to quality or fitness implied by the Goods Act 1958, *Trade Practices Act of 1974* and *Fair Trading Act 1989* of the State of Victoria or any corresponding legislation or any amendment or modification of the *Goods Act 1958* or any corresponding legislation in any other State or Territory in which the goods are sold, are hereby negated.
- b) Save as provided under Warranty in these Conditions the Company shall not be liable to the Customer under or in connection with or in relation to the Sale or in connection with goods or parts supplied for any loss, damage, injury, delay costs, charges or expenses whatsoever, however these may arise or be caused, whether directly, indirectly, consequentially or otherwise and whether due to or in connection with the negligence or any other act, omission, error or default of the Company, its servants, agents, contractors or otherwise or whether in or in connection with the performance of the Company's obligations under the Contract or otherwise.
- c) If Condition 3 (g) above applies, in the event of the Company failing to bring the goods up to the guaranteed standard within a reasonable period of time, the Company shall only be liable to accept the return of the goods concerned and to refund to the Customer the price or any part of the price of such goods paid by the Customer to the Company.

#### **5. DESPATCH OF EQUIPMENT**

- a) The Company shall elect whether delivery is at the Company's premises or any other point named on the Company's proposal. Notwithstanding any pre-payment of transport charges by the Customer the Company's responsibility for delivery ceases at this point.
- b) The Company will endeavour to comply with any date or dates stated in the Contract for delivery but is not under an absolute obligation to do so.
- c) If the Company shall fail to comply with any such date or dates the Customer shall not be entitled to treat such failure as a breach of or a repudiation of the Sale or to claim damages in respect thereof or to rescind the Sale or any other Sale between the Company and the Customer in whole or in part.
- d) Should the Company be prevented from delivering the goods at the time provided for delivery by reasons of lock-outs, strikes, riots, mutiny, fires, ice accidents or any other unexpected or exceptional causes beyond the reasonable control of the Company existing either at the manufacturer's works or at the port of shipment or anywhere else delivery shall be extended until the cause preventing delivery has ceased or the Sale may at the Company's option be annulled by delivery of a notice in writing to the Customer at any time during the period fixed for delivery.
- e) Should the Company be prevented from delivery of part of such goods whether due to lock-outs, strikes, riots, mutiny, fires, ice accidents or any other fact, circumstance or thing beyond its reasonable control the Company shall deliver and the Customer shall accept delivery of such part of such goods as the Company shall be able to deliver at the time fixed for delivery. The Customer shall pay for the part delivered by the same proportion of the price as the part



delivered bears to the whole of the goods agreed to be sold. In the event of any of the causes described above coming into operation, the Company shall be the sole judge of whether it is able to make a delivery and what part (if any) of such goods it shall deliver and it shall during the period fixed for delivery give notice in writing to the Customer specifying the part (if any) of such goods which it is able to deliver.

- f) The goods sold shall be at the Customer's risk after delivery to the Customer.
- g) Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:
  - i) a lien on the goods;
  - ii) the right to retain them for the price while the Company is in possession of them;
  - iii) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
  - iv) a right of resale,
  - v) the foregoing right of disposal,provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.

#### **6. GOOD & SERVICES TAX (GST)**

All prices are inclusive of GST unless expressly stated otherwise.

#### **7. PERSONAL PROPERTY SECURITIES ACT (PPSA)**

The PPSA and any other legislation and regulations in respect of it and the following words noted within this document have the respective meanings given to them in the PPSA; collateral, financing change statement, financing statement, grantor, interested person, proceeds, purchase money security interest, register, registration, security agreement, security interest and verification statement.

The Customer consents to the Company affecting and maintaining a registration on the register (in any manner considered appropriate) in relation to any security interest contemplated or constituted by this Sale Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and agree to sign any documents and provide all assistance and information as required to facilitate the registration and maintenance of any security interest. The Company may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Customer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

- a) The Customer undertakes to: do anything (in each case, including executing any new document or providing any information) that is required by the Company;
  - i) to acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds
  - ii) to register a financing statement or financing charge statement
  - iii) to ensure that the Company security position, and rights and obligations, are not adversely affected by the PPSA;
- b) not register a financing change statement in respect of a security interest contemplated or constituted by this Sale Agreement without the Company's prior written consent; and
- c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the Company's prior written consent.
- d) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Sale Agreement and;
  - i) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them; section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; and section 143; and
  - ii) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them; section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3),(4) and (5) and section 137.
- e) Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and the Company agree not to disclose information of the kind referred to in section 127(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives

any right, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

f) For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Schedule provided by the Company to the Customer from time to time. This Sale Agreement is a security agreement for the purposes of the PPSA.

g) The Company may apply amounts received in connection with this Sale Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Sale Agreement in any way the Company determines in its absolute discretion.

h) The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.

i) The Customer agrees to notify the Company in writing of any change to the Customer's details set out in the Credit Application, within five (5) days from the date of such change.

#### **8. PAYMENT TERMS**

Unless otherwise provided in the Proposal payment for goods shall be Cash on Delivery.

#### **9. RECEIPT**

a) All goods supplied by the Company shall thereby be sold to the Customer but full legal and equitable title in the goods sold shall remain vested in the Company until the Company has received payment in full from the Customer of all amounts owing from the Customer to the Company from time to time. The Customer shall have the right to sell goods in which title remains vested in the Company in the ordinary course of the Customer's Business.

b) All goods supplied by the Company to the Customer in which title has not passed to the Customer shall be held by the Customer as a fiduciary bailee of the Company. Until the goods have been paid for by the Customer in full or sold, the Customer shall store the goods so that the same are identifiable as the property of the Company and are not combined or merged with the other property of the Customer or a third party.

c) The Company shall have the right to repossess at any time any goods in respect of which payment is overdue, and to enter the premises of the Customer for this purpose without liability and without prejudice to the pursuit of any other legal remedy available to the Company.

d) There will be a 20% restocking fee on goods sold that are returned for credit after seven (7) days from the date of sale and no longer than 30 days from the date of sale. Credit returns do not apply to certain goods.

#### **10. EQUIPMENT REPAIR**

a) Where goods are lodged with the Company for repair or the work contracted by the Company with the Customer is for repair of goods, the Customer expressly agrees that the *Disposal of Uncollected Goods Act 1961* applies to such Contract.

b) In addition to the Company's rights under the *Disposal of Uncollected Goods Act 1961*, the Customer expressly agrees that if the goods are not collected within one month of service on the Customer by the Company of a notice in writing to collect such goods, the full legal and equitable title to the goods vests in the Company and the Company has the right to sell the goods to recover the costs of repair by auction or private treaty. The proceeds of such sale shall be applied by the Company as follows firstly, towards the costs and expenses of such sale, secondly, towards any outstanding costs of repair, and thirdly, the surplus (if any) will be to the Customer's account.

#### **11. TERMINATION**

a) Either party can terminate the Sale by mutual consent or when either party is unable to pay its debts as and when they fall due, has a receiver, official manager or similar officer appointed over any of its assets, enters into liquidation or provisional liquidation or has a mortgagee enter into possession of any of its assets, fails to fulfil its obligations or commits any other breach of the Sale and fails to remedy this breach within fourteen days of receiving written notice from the other party specifying the breach and requesting it to be remedied or breaches any of the representations or warranties given under the Contract or any of them are false, misleading or inaccurate in any respect.

b) No order may be cancelled except with the consent in writing of the Company and on terms which will indemnify the Company against all losses.

#### **12. REVIEW OF YOUR CREDIT APPROVAL**

a) From time to time the Company may review any Credit Account the Company has granted to the Customer without notice.

b) The Company may, at the Company's discretion, decide to withdraw credit for any reason, including but not limited to, the Customer's circumstances changing or the Customer fails to make payments on time.

c) If the Company withdraws credit the Customer must still pay amounts that were subject to credit in accordance with the terms on which that credit was provided.

### **13. SIGNING THIS SALE AGREEMENT**

a) The person signing any document which forms part of the Sale Agreement for and on behalf of the Customer hereby warrants that he or she has the Customer's authority to enter into the Sale Agreement on the Customer's behalf and grant the security interests in connection with it and is empowered to bind the Customer to the Sale Agreement and each security interest granted in connection with it.

b) The person signing this Sale Agreement indemnifies the Company against all losses, costs and claims incurred by the Company arising out of the person so signing this Sale Agreement not in fact having such power and/or authority.

### **14. CLAIM FOR PAYMENT**

This Sale Agreement is a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry Security of Payment Act 2002 (VIC), the Building and Construction Industry Payments Act 2004 (QLD), the Building and Construction Industry Security of Payment Act 2009 (SA), the Construction Contracts Act 2004 (WA), the Building and Construction Industry (Security of Payment) Act 2009 (ACT), the Building and Construction Industry Security of Payment Act 2009 (TAS), and/or the Construction Contracts (Security of Payments) Act 2009 (NT).



**GENERAL TERMS AND CONDITIONS OF CONTRACT**  
**GENERAL CONDITIONS FOR HIRE AND SALE DISCLAIMER**

- a) This Hire/Sale Agreement is governed by the laws of Australia. Each party irrevocably submits to the exclusive/non-exclusive jurisdiction of the courts of Australia.
- b) The heading in these Terms are for convenience only and shall not affect their interpretation.
- c) In the interpretation of this Contract the expression "Customer" and/or "Hirer" hereinbefore referred to shall include the Customer's and/or Hirer's respective executors, administrators, successors and assignees.
- d) Any offer by a Hirer to hire Equipment from the Company or any offer by a Customer to purchase Goods from the Company (whether such offer is accepted or not by the Company) shall constitute the Hirer's or Customer's acceptance of these General Terms and Conditions of Contract and the Hirer's or the Customer's Hire/Sale Agreement to be bound by these General Terms and Conditions of Contract. Where a Hirer or Customer purports to import, apply or impose its own terms and conditions, then, unless the Hirer's or Customer's terms and conditions are agreed in writing by the Company, the Hirer or Customer agrees that any terms and conditions which it attempts to impose, are rendered nugatory and these General Terms and Conditions of Contract shall take precedence and prevail at all times.
- e) In these Conditions, a reference to a party includes that party's legal personal representative, successors or assigns, references to a warranty or warranties shall include references to a guarantee or guarantees, the singular includes the plural and the plural includes the singular, reference to a gender includes a reference to each other gender.
- f) If a party consists of more than one person these Conditions bind them jointly and each of them severally.
- g) If any part of these Conditions is held to be void or unlawful, these Conditions are to be read and enforced as if the void and unlawful parts had been deleted.
- h) To the extent that any of the provisions herein contained are prohibited or void under the Australian Law or the *Trade Practices Act 1974* and subsequent amendments thereto such provisions that are so prohibited or void shall be ineffective to the extent of such provisions or as so void without invalidating the remaining provisions hereof and this Hire/Sale Agreement shall be construed as intended to operate in all respects to the maximum extent to which it can validly apply.
- i) The Company reserves the right to request the following waivers prior to accepting orders for the supply and installation of products for sale or hire.
  - i) Where the client occupies rented premises a waiver from the owner of the premises acknowledging the right of the Company to enter, remove and repossess at any time any Goods that form part of hire or sale of which payment is overdue
  - ii) Where the client owns the premises and they are mortgaged or have a debenture charge over them, a waiver from the mortgagor or debenture holder acknowledging the right of the Company to enter, remove and repossess at any time any Goods that form part of hire or sale of which payment is overdue.
- j) The Customer shall not off set against the Price, amounts due from the Company.
- k) The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- l) The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.
- m) Where Force Majeure prevents or delays the Company from performing an obligation under this Hire/Sale Agreement, that obligation is suspended as long as the Force Majeure continues, with Force Majeure defined as: "an act of God, war, revolution or any other unlawful act against

public order or authority, an industrial dispute including strike or other labour disturbances, a government restraint, a shortage or unavailability of raw materials, production capacity or transportation, fire, flood, drought, storm or other event beyond the reasonable control of the Company”.

- n) No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire/Sale Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default

#### **DISCLAIMER**

- a) The Customer acknowledges that except as set out herein, the Company does not give or make any warranty, assurances, promise, representation regarding the quality, fitness for use, suitability or merchantability of the Goods for any purpose whatsoever, and in acquiring the Goods, the Customer has relied entirely on the Customer's own knowledge, skill and judgement.
- b) The Company does not act as a contractor responsible for fitting the Goods. The Customer acknowledges that the Company is the supplier of the Goods only and it is the responsibility of the Customer to organise a contractor for fitting the Goods.
- c) The Company makes the following express warranties with respect to the Goods: The conditions and warranties necessarily implied under the law of the relevant State where this Hire/Sale Agreement is entered into and the Goods are supplied and the provisions of the *Trade Practices Act 1974* and any statutory modifications or re-enactment thereof.
- d) Any liability of the Company under Clause 3 (General Conditions of Sale) is limited to the extent permitted by law to such one or more of the following as determined by the Company in its absolute discretion:
- i. The replacement of the Goods or the supply of equivalent Goods; or
  - ii. The repair of the Goods; or
  - iii. The payment of the cost of replacing the Goods or acquiring equivalent Goods; or
  - iv. The payment of the costs of having the Goods repaired. The Company shall not under any circumstances be liable to any person whatsoever for any consequential loss or damage howsoever caused.

#### **PRIVACY**

- a) The Company takes the Hirer's/Customer's privacy seriously. The Company will comply with the National Privacy Principles in all dealings with the Hirer/Customer.
- b) The Company may need to collect personal information about the Hirer/Customer, including but not limited to, the Hirer's/Customer's full name, address, driver's licence, credit card details, date of birth, credit or business history and other personal information.
- c) The Hirer/Customer consents to the Company using the Hirer's/Customer's personal information in order to:
- i) fulfil functions associated with the supply of the Equipment to the Hirer/Customer, including but not limited to assessing the Hirer's/Customer's credit worthiness, or taking steps in accordance with clause 11 (General Conditions of Hire) or clause 7 (General Conditions of Sale);
  - ii) provide services to the Hirer/Customer;
  - iii) prevent theft of the Company's Equipment;
  - iv) enter into contracts with the Hirer/Customer or third parties; and
  - v) to market to Hirer/Customer and maintain a client relationship with the Hirer/Customer.
- d) The Hirer/Customer also consents to the Company disclosing the Hirer's/Customer's personal information:
- i) to any credit provider or credit reporting agency for the purposes of obtaining information about the Hirer's/Customer's consumer or commercial credit or business history or the Hirer's/Customer's commercial activities or credit worthiness; and
  - ii) to the Company's service providers, contractors and affiliated companies from time to time to help improve and market the Company's services to the Hirer/Customer.
- e) The Hirer/Customer has the right to access the personal information the Company holds about the Hirer/Customer.
- f) A copy of the Company's Privacy Statement is available upon request or visit [www.coolbreeze.net.au](http://www.coolbreeze.net.au)

#### **SEVERABILITY**

A provision of, or the application of a provision of, this Hire/Sale Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Where a clause in this Hire/Sale Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Hire/Sale Agreement.

#### **INDEMNITIES AND EXCLUSIONS AND LIABILITIES**

- a) The Hirer/Customer must:
- i) promptly inform the Company of all complaints or claims relating to any of the Equipment/Goods;
  - ii) not admit liability on behalf of the Supplier in respect of any complaint or claim relating to any of the Equipment/Goods.
  - iii) not resolve or settle any complaint or claim relating to any of the Equipment/Goods which may result in the Company incurring any liability (whether to a Hirer/Customer or any other person); and
  - iv) deal promptly with all complaints or claims relating to any of the Equipment/Goods which will not result in the Company incurring any liability.
- b) Except only for those rights and remedies that the Hirer/Customer has in respect of the Equipment/Goods under the Competition and Consumer Act 2010 (Cth) and similar state and territory laws and which cannot be lawfully excluded, restricted or modified:
- i) all conditions and warranties, whether statutory or otherwise, are excluded in relation to the Equipment/Goods and
  - ii) the Company is not liable to the Hirer/Customer for any loss which the Hirer/Customer suffers, incurs or is liable for in connection with supply of the Equipment/Goods under this Hire/Sale Agreement, except in accordance with clauses 3 (General Conditions of Hire) and 4 (General Conditions of Sale).
- c) The Hirer/Customer indemnifies the Company against any loss which the Company suffers, incurs or is liable for in connection with this Hire/Sale Agreement including, but not limited to:
- i) any act or omission of the Hirer/Customer; and
  - ii) any breach of this Hire/Sale Agreement by the Hirer/Customer.

#### **PREVIOUS EDITIONS**

This edition of the General Terms and Conditions of Contract replaces and supersedes all previous editions of the General Terms and Conditions of Contract the Company has issued.