

## TERMS OF BUSINESS

### PART 1 – GENERAL TERMS AND CONDITIONS

#### 1 Definitions and interpretation

1.1 In these Terms of Business, capitalised terms have the following meanings unless otherwise indicated:

**Capability Resources** means Capability Resources Pty Ltd ACN 108 621 101, its related bodies corporate and all of its trading divisions including EZ Energy.

**Claim** means any demand, claim, action, proceeding, judgment, damage, loss, cost expense, or liability incurred by or against a party, however arising and whether present, unascertained, immediate, future or contingent and whether or not arising in relation to matters which occurred in the past.

**Commencement Date** means the date on which a Contract commences as described in clause 2.4.

**Confidential Information** means any of Capability Resources' information (regardless of the form of disclosure or the medium used to store or represent it) and includes all information which:

- (a) related to any Contract Material;
- (b) is the property of Capability Resources or a related company of Capability Resources;
- (c) is disclosed in writing, orally or by any other means by Capability Resources or its employees, or by any person on behalf of Capability Resources to the Customer or employees or contractors of the Customer by any means; or
- (d) otherwise comes to the knowledge of the Customer or its employees or contractors by any means, including through the Customer's involvement with Capability Resources and its business operations,

but does not include information which becomes generally available to the public rather than as a result of disclosure by the Customer.

**Consulting and Professional Services** means the consulting and professional services Capability Resources may provide the Customer pursuant to Part 5 and as further described in the applicable Quote or Invoice.

**Consumable** means any consumable used in the operation and maintenance of the Equipment.

**Contract** means the contract between Capability Resources and the Customer for the provision of Services and/or Equipment and includes these Terms of Business and all applicable, Proposals, Quotes and Invoices between Capability Resources and the Customer.

**Contract Material** means all documents, specifications, drawings, designs, writings, samples, layouts, proposals, reports, inspection & testing record, checklist, assessment statement and other material, in whatever format or embodiment, created or provided by Capability Resources to the Customer under a Contract.

**Credit Account Application Terms** means any document or material provided to the Customer in connection with its application for credit to Capability Resources.

**Customer** means the party named in the applicable Quote or Invoice.

**Daily Rate** means the daily rate for the Equipment Hire Services, as set out in the applicable Schedule of Rates.

**Damage Waiver** means the price stated in the Quote or Proposal paid by the Customer to reduce the Customer's financial liability in the event of loss or damage to the Equipment which shall be 12% of the Equipment Hire Prices set out in an applicable invoice.

**Delivery Date** means the date for delivery of Equipment as specified in an applicable Quote or Invoice or otherwise notified in writing to the Customer by Capability Resources.

**Economic Loss** means loss of revenue, loss of profit, loss of custom, loss of goodwill, loss of overhead recovery, loss of business opportunity, loss of the use of money, loss of use of property, loss of contract, loss of production, loss or payment of financing charges or cost recovery, opportunity cost, payment of liquidated sums, payment of damages (whether under any other agreement or otherwise).

**Equipment** means any item of plant and equipment (including any accessories) which Capability Resources agrees to:

- (a) hire to the Customer pursuant to Part 2; or
- (b) sell to the Customer pursuant to Part 3;

including any Equipment that replaces any original Equipment hired or sold.

**Equipment Hire Services** means Capability Resources' provision of Equipment for hire by the Customer as further described in Part 2 and the applicable Quote or Proposal.

**Hire Period** means the period of hire of the Equipment, as specified in the applicable Quote or Proposal, and includes any extension of that period as agreed in writing by Capability Resources and any period of holding over in accordance with clause 22.

**Indicia** means, in relation to the Equipment, Capability Resources' or the manufacturer's identification, trade name, trade mark, and any other signage on the

Equipment including warning signs or signs relating to the proper and safe operation and maintenance of the Equipment.

**Inspection Services** means inspections, audits and other related services to determine compliance with relevant laws and standards, including the creation and provision of related Contract Material, which Capability Resources may provide the Customer pursuant to these Terms of Business and as further described in the applicable Quote or Invoice.

**Insolvency Event** means, in relation to a party:

- (a) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (b) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (c) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (d) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (e) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re-amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (f) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (g) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (h) an execution or analogous process is levied or enforced against the property of that party;
- (i) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (j) that party disposes of, or threatens to dispose of, a substantial part of its assets; or
- (k) that party is unable to pay the party's debts as and when they become due and payable

**Instructions** means all relevant information for Equipment including operating manuals, instructions, safe operating procedures, manufacturer's instructions and other directions provided by Capability Resources for the Equipment whether or not in writing.

**Intellectual Property Rights** means all present and future rights to:

- (a) trade marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how); and
- (b) where the rights referred to in paragraph (a) are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such applications.

**Invoice** means an invoice for Equipment or Services issued by Capability Resources to the Customer.

**Labour Hire Services** means the labour hire services agreed between the Customer and Capability Resources to be provided to the Customer by Temporary Staff Members under Part 4.

**Law** means any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise.

**Loss** means damage, loss, cost, expense or liability (whether actual or contingent).

**Part** means a Part of these Terms of Business.

**Placement Fee** means the applicable fee specified in clause 8.4(c).

**PPSR** means the Personal Property Security Register as defined in the Personal Property Securities Act 2009 (Cth) as amended (PPSA). The following words in clause 16 have the respective meanings given to them in the PPSA: "collateral", "financing change statement", "financing statement", "interested person", "purchase money security interest", "register", "registration", "security agreement", "security interest" and "verification statement".

**Price** means the amount payable by the Customer to Capability Resources for the performance of a Service or hire/sale of Equipment, which will be calculated with reference to the applicable Schedule of Rates.

**Proposal** means a proposal issued by Capability Resources to the customer in relation to a request for Equipment or Services.

**Quote** means a job quotation issued by Capability Resources to the Customer in relation to a request for Equipment or Services.

**Schedule of Rates** means the applicable Capability Resources schedule of rates for a relevant Service as amended from time to time.

**Service** means any service performed by Capability Resources for the Customer under a Contract, including Consulting and Professional Services, Equipment Hire Services Inspection Services, Labour Hire Services, Testing & Repair Services and Training Services.

**Site** means, in relation to:

- (a) Part 1, the meaning assigned to that term in any or all of paragraphs (b) to (e) below, as the context dictates;
- (b) Part 2, the address or location to which Capability Resources will deliver the Equipment on behalf of the Customer and that is specified in an applicable Quote, Proposal or Invoice or otherwise notified by Capability Resources to the Customer in writing;
- (c) Part 3, the location at which the Equipment will be delivered;
- (d) Part 4, the location at which the Labour Hire Services will be performed; and
- (e) Part 5, the location at which the Consulting and Professional Services will be performed.

**Temporary Staff Member** means a staff member of Capability Resources who performs the Labour Hire Services.

**Term** means the term of a Contract as described in clause 3.

**Terms of Business** means these Terms of Business including all Parts.

**Testing, Repair, Maintenance and Installation Services** means any testing, repair maintenance and installation of Equipment or mechanical, electrical or other assets, including the creation and provision of related Contract Material, which Capability Resources may provide the Customer pursuant to these Terms of Business and as further described in the applicable Quote or Invoice.

1.2 In these Terms of Business, unless the context otherwise requires:

- (a) **(headings)** headings are for convenience only and do not affect interpretation;
- (b) **(singular)** the singular includes the plural and vice versa;
- (c) **(includes)** a reference to "includes" means "includes, but is not limited to";
- (d) **(corresponding meanings)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) **(other entities)** a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (f) **(successors and assigns)** a reference to a Party to a document includes that Party's permitted successors, assigns, administrators and substitutes;
- (g) **(rules of construction)** no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of a Contract;
- (h) **(joint and several)** an agreement on the part of 2 or more persons binds them jointly and severally; and
- (i) **(writing)** a reference to a notice from, consent or approval of a party and agreement between the parties, means a written notice, consent, approval or agreement.

1.3 If there is any inconsistency or conflict between any of the documents forming part of a Contract, those documents will be interpreted in the following order of priority to the extent of the inconsistency or conflict:

- (a) Credit Account Application Terms;
- (b) Invoice;
- (c) Quote;
- (d) Proposal and
- (e) Terms of Business.

1.4 If there is any inconsistency or conflict between any Credit Account Application Terms, Invoices, Quotes or Proposals issued to the Customer in connection with a Contract, then the later dated Credit Account Application Terms, Invoice, Quote or Proposal takes priority and will apply to the extent of the inconsistency or conflict.

## 2 Formation of Contract

2.1 Following its receipt of the Customer's request for Services or Equipment, Capability Resources will issue the Customer a Quote or Proposal that sets out:

- (a) the estimated Price for the requested Services or Equipment calculated with reference to the applicable Schedule of Rates; and
- (b) any other relevant details or information regarding the requested Services or Equipment.

2.2 The Customer's acceptance of a Quote or execution of a Proposal also constitutes:

- (a) acceptance of these Terms of Business and their application to the Services or Equipment supplied or sold to the Customer by Capability Resources; and

- (b) formation of the Contract between the Customer and Capability Resources.

2.3 Each accepted Quote or signed Proposal constitutes a separate Contract for Services or Equipment between the Customer and Capability Resources which incorporates these Terms of Business.

2.4 The Commencement Date for a Contract will be:

- (a) the date on which the Customer notifies Capability Resources that it accepts the first Quote issued by Capability Resources; or
- (b) the date of the first Proposal signed by the parties.

## 3 Term

A Contract commences on the Commencement Date and will continue until:

- (a) expiration of all applicable Hire Periods;
- (b) completion of all applicable Services; and
- (c) completion of any sale of Equipment to the Customer, whichever applies unless terminated earlier in accordance with the Contract.

## 4 Services

4.1 Subject to the Customer's payment of all applicable Invoices, Capability Resources will provide Services to the Customer in accordance with the applicable Contract.

4.2 Capability Resources may, without penalty or liability to the Customer, refuse to provide any part or all of the Services if, in its reasonable opinion, providing the relevant part or all of the Services may present a safety hazard for any person involved in providing the Services.

4.3 Any times for the performance of Services made known to, or requested by, the Customer are estimates only and Capability Resources will not be liable for any Claim for late or non-performance.

4.4 If:

- (a) Capability Resources is ready to perform Services in accordance with the applicable Quote or Proposal but the Customer is unable or unwilling to allow Capability Resources to commence performance of the Services; or
- (b) the performance of the Services is delayed or suspended for any reason other than the default of Capability Resources,

Capability Resources may provide an Invoice for, and the Customer must pay, Capability Resources' reasonable costs and expenses of the delay or suspension.

## 5 Contract Material prepared by Capability Resources

5.1 Capability Resources will prepare Contract Material:

- (a) in connection with its performance of the relevant Services in accordance with the applicable Contract;
- (b) based on the Customer's instructions and information provided by the Customer or on its or on the Customer's behalf;
- (c) taking into account information known to Capability Resources at the issue date of, or any earlier effective date specified in, the relevant Contract Material (**Effective Date**);
- (d) solely for the specific purpose set out in the agreed scope of work to which a Contract applies or otherwise confirmed in writing by Capability Resources (**Agreed Purpose**); and
- (e) that may contain content that diverges from applicable standards (including Australian Standards) or is applicable to only some or parts of standards, and while all reasonable endeavours have been made to adhere to relevant standards, the Contract Material may not have 100% adherence, and the Customer hereby agrees and accept such, and agrees that it is the Customer's responsibility to independently verify their required or intended compliance with relevant specific standards for their intended application

5.2 Without prejudice to any other exclusion or limitation of liability in any Contract and to the maximum extent permitted by Law, neither Capability Resources nor any of its officers, employees, agents or contractors will accept any liability or responsibility of any kind arising out of or in connection with:

- (a) the use of, or reliance on, any Contract Material (or any part of the Contract Material) by any person other than the Customer;
- (b) the use of, or reliance on, any Contract Material (or any part of the Contract Material) by the Customer for any purpose other than the Agreed Purpose;
- (c) reliance on inaccurate or misleading information provided by the Customer or on the Customer's behalf or obtained from any third party source, except to the extent it is not reasonable in all the circumstances for Capability Resources to rely on that information;
- (d) any fact or circumstance arising after the Effective Date; or
- (e) the matters, disclosures and acknowledgements set out in clause 5.1(e)

## 6 Payment

- 6.1 Subject to any other payment terms specified in a subsequent Part of these Terms of Business or a Contract, the Customer must pay Capability Resources all amounts stated in an Invoice within 30 days of the date of the Invoice.
- 6.2 The Customer authorises Capability Resources to complete and submit all documentation on behalf of the Customer required to enable payment through any credit card or direct debit system. Capability Resources may, in addition to the Price, charge a credit card surcharge equal to, or less than, their average cost of accepting cards in line with the Competition and Consumer Amendment (Payment Surcharges) Act 2016, of the total Price for payment by credit card. Capability Resources reserves the right to refuse payment by credit card, including where payment is not made in accordance with any Part of these Terms of Business or otherwise in accordance with the applicable Contract.
- 6.3 The Customer must pay interest, where requested, to Capability Resources at the rate of 1% per month on any Invoice amount which is overdue, where such interest will be calculated from the date it became due until the date it is paid.
- 6.4 All Prices exclude GST and stamp duty unless otherwise expressly specified in an Invoice, Quote or Proposal and the Customer must pay all GST and Stamp Duty on the Price (where applicable).
- 6.5 It is at the complete discretion of Capability Resources as to whether it shall provide the Customer any form of credit. The credit limit approved by Capability Resources and advised to the Customer must not be exceeded. Capability Resources periodically reviews its credit limits. By agreeing to these Terms of Business the Customers agrees that Capability Resources may review and revise the applicable credit limit from time to time. If the Customer requests in writing that Capability Resources increase the credit limit such decision shall be at Capability Resources complete discretion. Capability Resources may reduce the credit limit at the Customer's specific request in writing. Capability Resources may also reduce the credit limit without Customer approval, but Capability Resources will not reduce the credit limit below the outstanding balance on the Account at the time of the reduction without prior consultation with the Customer.

## 7 Intellectual Property Rights

- 7.1 All Intellectual Property Rights in relation to all Contract Material:
- produced by Capability Resources in connection with a Contract immediately vests in Capability Resources; or
  - which is otherwise disclosed or made accessible by Capability Resources to the Customer remains the sole property of Capability Resources.
- 7.2 Subject to the Customer's payment of all Invoices in accordance with a Contract, Capability Resources grants the Customer a non-exclusive, non-transferrable licence to use the Contract Material during the Term to the extent directly required to obtain benefit from a Service or operate the Equipment.

## 8 Non-poach

- 8.1 The Customer must not:
- Employ;
  - Solicit the employment; or
  - Assist in any way (either directly or indirectly) a third party to employ or solicit the employment;
- of any individual member of Capability Resources' employees (including any Temporary Staff Member) while they are engaged in the performance of the Services or employed by Capability Resources or within 12 months following completion of the Services of the cessation of their employment with Capability Resources.
- 8.2 If any of Capability Resources' employees cease to work for Capability Resources as a result of the Customer's breach of clause 8.1, the Customer must:
- pay Capability Resources the applicable Placement Fee; and
  - allow any further reasonable time that may be required by Capability Resources to replace the individual employee of Capability Resources in relation to the provision of the Services.
- 8.3 The Customer must pay the Placement Fee if a Capability Resources employee ceases performing the Services and takes up employment with another company working on the Site performing similar Services.
- 8.4 If Capability Resources is unable to perform the Services due to the Customer's breach of clause 8.1, or as a result of the employment of any of Capability Resources employees by any other contractor at the Site, then Capability Resources may:
- suspend performance of the Services until such time as the individual employee is replaced; and
  - provide the Customer an Invoice for, and the Customer must pay, the reasonable costs and expenses of the suspension.

- The Placement Fee will be \$5,000.00 unless otherwise agreed with Capability Resources. Staff Member Performance Concerns

## 9 Staff Member Performance Concerns

The Customer should advise Capability Resources as soon as is practical if it is not satisfied with the work, performance of service, or behaviour of Capability Resources staff.

## 10 Indemnity

The Customer indemnifies Capability Resources and its officers, employees and agents from and against all Claims that may arise as a result of or in connection with:

- a breach of a Contract (including a breach of warranty) by the Customer or its officers, employees and agents;
- any unlawful act of the Customer or its officers, employees and agents;
- any improper, careless or negligent act or omission of the Customer or its officers, employees and agents;
- Capability Resources' entry upon the Site; or
- contact with underground, overhead or other located pipes or wires on the Site.

## 11 Exclusion of warranties

- 11.1 To the maximum extent permitted by Law, Capability Resources excludes all warranties and conditions in relation to Equipment or Services imposed by statute or otherwise implied.
- 11.2 To the extent that a term implied by Law can not be excluded, Capability Resources' liability to the Customer for a breach of a Contract or any defective Equipment or Service is limited (at Capability Resources' option) to:
- in the case of Equipment, either replacing, repairing or paying the cost of replacing or repairing the Equipment (and which option shall be at the discretion of Capability Resources); or
  - in the case of Services, either supplying the Services again or paying the cost of having the Services supplied again (and which option shall be at the discretion of Capability Resources).

- 11.3 Despite any other provision of a Contract and to the fullest extent permitted by law, Capability Resources, its officers, employees, agents and contractors will not be liable to the Customer for any amount, liability or other Claim in connection with the Contract to the extent that the amount, liability or Claim is for Economic Loss or any special, indirect or consequential loss.

## 12 Limitation of liability

- 12.1 The Customer is solely liable and responsible for any Claims arising from or in connection with:
- the Services; or
  - its use of the Equipment other than in accordance with any specification or instruction provided by Capability Resources in relation to the Equipment.
- 12.2 Notwithstanding any other provision of a Contract, Capability Resources' total liability to the Customer in connection with the Contract is limited to an amount equal to the Price.
- 12.3 Capability Resources is not liable to the Customer for, and the Customer indemnifies and releases Capability Resources from and against all liability in respect of:
- all Economic Loss and indirect or consequential loss whether under contract, in tort (including negligence), in equity, under statute or otherwise that may arise directly or indirectly in relation to a Contract;
  - failure to have the Equipment ready for collection when the Hire Period commences;
  - failure to deliver the Equipment in accordance with the delivery instructions;
  - loss, damage or injury to any person, property, animal or thing resulting from the delivery, installation, inspection, use, dismantling and collection of the Equipment;
  - breakdown or failure of the Equipment;
  - failure to provide equipment of the type and in the quantity specified in the Quote or Proposal; and
  - defects in the installation of the Equipment at the Site.

## 13 Confidentiality

- 13.1 The Customer covenants with Capability Resources that it:
- will only use the Confidential Information for the purpose approved by Capability Resources in writing; and
  - will not disclose, or permit to be disclosed Confidential Information to any person without the prior written consent of Capability Resources, except:
    - as required by Law; or

- (2) to bona fide independent consultants or advisers of the Customer, provided they are subject to equivalent confidentiality obligations.

13.2 The Customer must, upon written request by Capability Resources, and in any event at the end of the Term, return to Capability Resources all Confidential Information including all copies and duplicates in whatever form.

13.3 Nothing in this clause 13 derogates from any obligation which the Customer may have either under the *Privacy Act 1988* (Cth) or equivalent state laws as amended from time to time, or under a Contract, in relation to the protection of personal information.

13.4 This clause 13 survives the expiration, termination or frustration of a Contract.

#### 14 Termination and Breach

14.1 Capability Resources may terminate a Contract:

- (a) at any time without cause or liability to the Customer by giving 14 days prior written notice of termination; or
- (b) immediately by written notice if:
  - (1) the Customer breaches the Contract and has failed to remedy the breach within 14 days of being notified of the breach by Capability Resources;
  - (2) the Customer commits an irremediable breach of the Contract; or
  - (3) the Customer experiences an Insolvency Event.

14.2 On termination of a Contract by Capability Resources for whatever reason, the Customer must immediately return all Equipment hired to the Customer pursuant to Part 2, or Capability Resources may at its election collect such Equipment from the Site.

14.3 If the Customer breaches these Terms of Business or a Contract, the Customer shall indemnify Capability Resources from and against any and all costs, fees and disbursements incurred by Capability Resources in respect to or arising from the breach including legal costs on a full indemnity basis.

14.4 Without prejudice to any other remedies that Capability Resources may have, if at any time the Customer is in breach of any obligation under these Terms of Business or a Contract (including those related to payment), Capability Resources may suspend any of its obligations under these Terms of Business or any Contract and retain any payments made by the Customer to date. Capability Resources will not be liable to the Customer for any Loss the Customer suffers because Capability Resources has exercised its rights under this clause.

#### 15 Dispute resolution

15.1 If an issue, dispute or difference between or among any of the parties arises out of, or in relation to, a Contract (**Dispute**), a party to the Dispute (**Disputant**) must not commence any court proceedings relating to the Dispute unless the Disputants have complied with this clause except where a Disputant seeks urgent interlocutory relief.

15.2 A Disputant may give written notice (**Notice of Dispute**) to the other Disputants specifying:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the Disputant issuing the Notice of Dispute believes is correct.

15.3 If the Dispute is not resolved within 7 days after the last date on which a Notice of Dispute is given, each Disputant must nominate a suitable senior executive as its representative with the authority to settle the Dispute.

15.4 If the Dispute is not resolved within 21 days of referral to senior executives under clause 15.3, the Disputants must mediate the Dispute in accordance with the mediation rules of the Law Society of New South Wales, and unless otherwise agreed in writing by the parties the President of the Law Society of New South Wales (or the President's nominee) will select the mediator and determine the mediator's remuneration.

#### 16 Personal Property Securities Act 2009 (PPSA)

16.1 Upon acceptance of any Quote or Proposal by the Customer, the Customer acknowledges and agrees that this document:

- (a) constitutes a Security Agreement; and
- (b) creates a Security Interest in all goods supplied, whether by sale or hire, pursuant to this Agreement (**Goods**);

16.2 The Customer undertakes to:

- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which Capability Resources may reasonably require to:

- (1) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Goods;

- (2) register any other document on the PPS Register which is necessary to perfect Capability Resources' Security Interest over the Goods; or

- (3) correct a defect in any document referred to in clause 16.2(a)(1) and 16.2(a)(2);

- (b) indemnify, and upon demand reimburse, Capability Resources for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register;

- (c) not register a Financing Statement or a Financing Change Statement in respect of the Goods without the prior written consent of Capability Resources;

- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of Capability Resources;

- (e) keep full and complete records of the Goods; and

- (f) without limiting any other right Capability Resources may have, immediately return the Goods if requested to do so by Capability Resources following non-repayment of any amount owing by the Customer to Capability Resources or following the breach of any other obligation of the Customer.

16.3 Capability Resources and the Customer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.

16.4 The Customer waives its right to receive notices or statements under sections 95, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 135, and 137(2) of the PPSA.

16.5 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

16.6 Unless otherwise agreed to in writing by Capability Resources, the Customer waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.

16.7 The Customer grants Capability Resources a Security Interest in all of the Customer's present and after-acquired property.

#### 17 General

17.1 No amendment to a Contract will be binding on any party unless made in writing properly and duly executed by that party.

17.2 The failure of Capability Resources to exercise any right arising as a result of a breach by the Customer of a Contract will not waive that right, nor will any practice developed between the parties waive or lessen Capability Resources' rights under the Contract.

17.3 The Customer must not assign, novate or otherwise encumber its rights under a Contract unless the Customer is subject to a change in control, in which case the Contract may be assigned with Capability Resources written consent.

17.4 Capability Resources may assign, novate, encumber or otherwise deal with its interest in or rights and obligations under these Terms of Business or any Contract made hereunder in its complete discretion and without the prior written consent of the Customer. A Contract will be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

17.5 Clauses 1.5, 6, 7, 8, 10, 11, 12, 13, 17, 26, 32, 33, 36, 38, 39, 40, 41, 42, 43, 46, 57, 58, 60, 63.2 and 63.3 continue to apply after termination or expiration of a Contract

17.6 If any provision of a Contract is, for any reason, considered or found by a court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of the Contract. The remainder of the provisions of the Contract will remain in full force and effect unless the basic purposes of the Contract are defeated.

17.7 Any person signing or purporting to sign a document on behalf of the Customer warrants that they have the authority of the Customer to sign and indemnifies Capability Resources against all losses incurred if that person does not have such authority.

17.8 If the Customer is more than one person the Customer is jointly and severally liable under a Contract.

17.9 The laws of New South Wales govern a Contract and the parties submit to the non-exclusive jurisdiction of the New South Wales courts.

17.10 If the Customer is the trustee of a trust (whether disclosed to Capability Resources or not), the Customer warrants to Capability Resources that:

- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Customer has the right to be reasonably indemnified out of trust assets;
- (c) the Customer has the power under the trust deed to sign this agreement; and

- (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Capability Resources.

The Customer must give Capability Resources a copy of the trust deed upon request.

17.11 The Customer shall not be entitled to set off against, or deduct from amount payable, any sums owed or claimed to be owed to the Customer by Capability Resources nor to withhold payment of any invoice because part of that invoice is in dispute.

## 18 Privacy

Capability Resources collects personal information to assist it in providing the goods or Services the Customer has requested and to improve its products and Services. Capability Resources and all related companies may be in touch to let the Customer know about goods, Services or promotions which may be of interest to the Customer. The Customer should let Capability Resources know if it objects to this and if it would prefer not to be contacted with special offers or in relation to Capability Resources' other goods and Services.

## 19 Environment

The Customer undertakes to comply with all Environmental Laws and regulations. The Customer agrees to indemnify Capability Resources against all liability, claims, damage, loss, costs and expenses (including legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Capability Resources) which we may incur as a result of the Customer's failure to comply with any environmental law or regulation.

## PART 2 – HIRE OF EQUIPMENT

### 20 Application

The provisions described in this Part 2 apply to a Contract if the Customer has accepted a Quote or Proposal for Equipment Hire Services or otherwise has agreed in writing to obtain Equipment Hire Services from Capability Resources.

### 21 Hire

21.1 Capability Resources agrees to provide, and the Customer agrees to accept and pay for, the Equipment Hire Services for the Hire Period on the terms of the applicable Contract.

### 22 Expiry of Hire Period

22.1 If requested by the Customer before the expiry of the Hire Period and agreed in writing by Capability Resources, the Customer may remain in possession of the Equipment following expiry of the Hire Period.

22.2 For any extension of the Hire Period and during the period of any holding over unless otherwise agreed in writing by Capability Resources, the Customer will be liable to pay the Daily Rate for the Equipment and a Contract will continue to apply, until the Equipment has been returned to Capability Resources and all obligations of the Customer have been performed to the satisfaction of Capability Resources.

22.3 Unless Capability Resources has agreed a specific period of extension to the Hire Period, Capability Resources may terminate the holding over period on 24 hours' notice and in such circumstances, the Customer must return the Equipment or, if it has been agreed that Capability Resources will collect the Equipment, make the Equipment available for collection, by the end of that notice period.

### 23 Termination

23.1 Subject to its payment of liquidated damages in accordance with clause 26.1, the Customer may terminate a Contract for Equipment Hire Services at any time.

23.2 If a Contract is terminated by Capability Resources in accordance with clause 14.1(a), it will refund to the Customer a pro rated portion of any Price paid in advance for the remainder of the Hire Period, calculated from the date on the Equipment is returned to Capability Resources.

### 24 Price

24.1 Unless otherwise stated in the applicable Quote or Proposal, the Price for Equipment Hire Services excludes:

- (a) delivery or freight;
- (b) preparation of the Site; or
- (c) installation, dismantling, packing or pick up.

24.2 Unless otherwise stated in the Quote or Proposal, the Customer must pay to Capability Resources in addition to the Price, all costs incurred by Capability Resources (including labour costs):

- (a) for delivery of the Equipment;
- (b) for freight, installation, dismantling, packing and pick up of the Equipment;
- (c) for providing any services in connection with the Equipment to the Customer outside of ordinary work hours, on weekends or public holidays;

- (d) for consultancy and other similar services provided in connection with the Equipment;
- (e) if the Site is not adequately prepared for delivery and / or installation of the Equipment;
- (f) if Capability Resources cannot obtain access to the Site;
- (g) arising from a variation to a Contract, including without limitation: a change in the type of Equipment required; a change in the position where the Equipment is to be or has been installed upon the Site; a change in the location of the Site; or a change in the delivery or pick up instructions;
- (h) arising from a failure of the Customer to be in attendance at the agreed time for delivery or pick up of the Equipment;
- (i) in cleaning the Equipment where it has been returned in an unclean state;
- (j) for service calls to the Site during the Hire Period;
- (k) for Site inspections
- (l) in enforcing any provision of a Contract against the Customer;
- (m) for replacement of any Equipment not returned by the Customer at the end of the Hire Period; and
- (n) in relation to any environmental levy in respect of waste disposal
- (o)

24.3 This clause 24 does not limit Capability Resources' rights to damages, claim Loss, compensation or indemnity under any other provision of a Contract.

### 25 Payment

25.1 The Price for Equipment Hire Services will be paid as follows:

- (a) **Cash sale:** 100% prior to commencement of the Hire Period (a bond may also be charged)
- (b) **Approved Customers:** as per account trading terms, unless otherwise agreed in writing by Capability Resources.

25.2 Capability Resources is not obliged to deliver any Equipment to the Customer until all funds provided for payment of the Price are cleared, for Approved Customers, when a valid Customer Order Number is received and received by Capability Resources.

### 26 Cancellation and Early Return

26.1 If the Customer terminates a Contract under clause 23.1 or fails to take delivery of the Equipment, the Customer must pay the Price to Capability Resources as liquidated damages, where requested.

26.2 Each party acknowledges that the liquidated damages referred to in clause 26.1 are a genuine pre-estimate of the loss and damage Capability Resources will suffer as a result of the Customer's:

- (a) termination of a Contract under clause 23.1; or
- (b) failure to take delivery of Equipment from Capability Resources.

26.3 The Customer is not entitled to any refund of the Price if it returns the Equipment before the Hire Period ends.

### 27 Delivery information

If Capability Resources has agreed to deliver or pick up the Equipment, the Customer must provide Capability Resources with clear delivery, installation and pick up instructions at least 7 days prior to commencement of the Hire Period. These instructions must include the date, time, place and name of the Customer's representative who will receive and return the Equipment.

### 28 Access

The Customer warrants that it has the right to access the Site, and that Capability Resources may access the Site to fulfil its obligations under a Contract.

### 29 Preparation of Site

The Customer must prepare the Site to Capability Resources' satisfaction for delivery, installation, dismantling and pick up of the Equipment. This includes ensuring the Site is accessible, removing obstacles, levelling the ground, and ensuring the Site is safe. Capability Resources is not responsible for doing these things.

### 30 Electricity

Capability Resources may at no charge use the electricity supply at the Site for the purposes of installing or operating any of the Equipment.

### 31 Operation and Maintenance

31.1 During the Hire Period, the Customer is responsible for all reasonable service, repair and maintenance of the Equipment and must keep the Equipment in good operating condition and appearance subject to fair wear and tear.

31.2 If the Customer is required to use any Consumables in connection with the operation and maintenance of the Equipment, the Customer must use only those Consumables specified in the Instructions or otherwise approved by Capability Resources in writing.

31.3 The Customer will have the sole responsibility for the training of its employees, officers and agents to operate the Equipment and for compliance with all applicable laws relating to the operation and maintenance of the Equipment.

31.4 The Customer must not allow the Equipment to be operated by a person who is not properly trained or licensed.

31.5 The Customer will, at the Customer's cost, obtain all necessary approvals, permits, licences in connection with the installation and operation of the Equipment. The Customer must not use the Equipment for a purpose which is different from that for which it is designed.

### 32 Return of Equipment

32.1 Subject to any extension or holding over of the Hire Period in accordance with clause 22, the Customer must return the Equipment to Capability Resources before 5.00pm on the last day of the Hire Period.

32.2 Where Capability Resources has agreed to collect the Equipment from the Customer, the Customer must have the Equipment ready for collection on the last day of the Hire Period in accordance with the Quote, Proposal or the Customer's written instructions.

32.3 The Equipment must be returned clean, in good repair, and otherwise ready for transit or storage.

32.4 If the Equipment is returned or collected and Capability Resources receives goods owned by the Customer, Capability Resources may at its sole discretion:

- (a) dispose of those goods without liability to the Customer unless the Customer claims them within 14 days after they came into Capability Resources' possession; or
- (b) regardless of whether the Customer claims the goods, return the goods to the Customer at the Customer's cost.

### 33 No Warranty

Capability Resources gives no warranty or representation that the Equipment is fit for the purpose required by the Customer. The Customer must satisfy itself as to this.

### 34 Substitution of Equipment

Capability Resources may substitute the Equipment with equipment of a similar type without the prior consent of, or liability to, the Customer.

### 35 Display of Indicia

The Customer must not conceal, remove or obliterate any Indicia on the Equipment.

### 36 Title and risk

36.1 At no time will the Customer acquire any right, title, property or interest in the Equipment. The Customer must not affix or permit the Equipment, or any part of it, to be affixed to any real property without the prior written consent of Capability Resources and then only temporarily and to the extent necessary for the proper use of the Equipment.

36.2 The Customer will do all things necessary (or as deemed necessary by Capability Resources) to ensure that neither it nor any third party will, as a fixture, by registration or otherwise, acquire or retain an interest in the Equipment.

36.3 The Customer assumes all risk for the Equipment during the Hire Period and at all times until the Equipment is returned to Capability Resources. The Customer holds the Equipment as bailee and must take reasonable care of it in accordance with the applicable Contract

36.4 The Customer must not:

- (a) part with possession of the Equipment or encumber it in any way; or
- (b) claim a lien over or retain possession of any Equipment in satisfaction of any Claim.

### 37 Instructions

37.1 The Customer acknowledges and agrees it:

- (a) has received Instructions regarding the proper and correct use of the Equipment;
- (b) understands all Instructions; and
- (c) will comply with all Instructions when using or otherwise dealing with the Equipment.

37.2 The Customer acknowledges that it has received all relevant information from Capability Resources as to the safe and proper use of the Equipment so as to enable the Customer to appropriately identify and assess any risks and hazards associated with the Equipment and implement any risk control measures to eliminate or control any risks.

### 38 Inspection and Repair

Capability Resources may inspect and repair the Equipment at any time during the Hire Period. Capability Resources or its representative may enter upon the Site for this purpose.

### 39 Removal, alteration and use of Equipment

The Customer must not:

- (a) remove the Equipment from the Site or its position of installation;
- (b) alter the Equipment; or
- (c) repair or attempt to repair the Equipment.

### 40 Damage to Equipment

40.1 The Customer indemnifies Capability Resources from, and must pay Capability Resources on demand all:

- (a) replacement costs for any loss or damage to Equipment which is a result of fire, storm, earthquake, collision, accident or theft during the Hire Period or at any time during which it is in the Customer's possession; and
- (b) other losses or expenses Capability Resources may directly or indirectly incur as a result of:
  - (1) the Customer's liability for failure to return the Equipment.
  - (2) breach of any statutory laws or regulations in connection with the use of the Equipment by the Customer;
  - (3) misuse, abuse, wilful or malicious acts, negligent or reckless use or overloading of the Equipment;
  - (4) disregard of Instructions given to the Customer by Capability Resources in respect of the proper use of the Equipment or in contradiction of the manufacturer's instructions if supplied with the Equipment at the time of hiring;
  - (5) the unexplained disappearance of the Equipment; or
  - (6) theft of the Equipment while the Equipment is in transit.

40.2 Damage Waiver:

This clause applies if the Quote or Proposal specifies that the Damage Waiver must be paid by the Customer or if the Customer does not provide evidence of insurances under clause 42. For the purpose of this clause, the term Equipment does not include any tools, accessories, parts, fuels, fluids, hoses, filters or similar not identified in the Quote or Proposal.

- (a) If the Customer has acquired the Damage Waiver, then, subject to the Customer paying the Damage Waiver amount set out in the Quote or Proposal, the Customer's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft, is limited to the Damage Waiver amount specified in the Quote or Proposal.
- (b) The Customer's liability will not be limited in accordance with clause 40.2(a) if, in Capability Resources' opinion, the loss or damage to the Equipment arises from or is caused by: (a) breach of the Quote, Proposal or Terms of Business (b) improper use of the Equipment; (c) transporting, loading or unloading; (d) lack of maintenance, inspection or other normal servicing of the Equipment; (e) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment; (f) exposure to any corrosive substance or environment; (g) use or location of the Equipment in an unsuitable environment of any kind; (h) negligent acts or omissions of the Customer.

### 41 Bond

41.1 If requested by Capability Resources the Customer must pay (in addition to the Price) a bond equivalent to a percentage of the Price determined by Capability Resources.

41.2 Capability Resources may apply so much of the bond as is necessary to compensate Capability Resources for any breach by the Customer of a Contract, or any damage or loss sustained in respect of the Equipment. The balance (if any) is refundable to the Customer upon the return of the Equipment at the end of the Hire Period and completion of any cleaning and repairs.

### 42 Insurance

(a)

42.2 As an alternative to the Damage Waiver, the Customer agrees to:

- (a) Insure and keep the Equipment insured with a reputable and solvent insurer and specifically notes Capability Resources' interests and lists Capability Resources as an insured party for the full new replacement value against fire, accident, theft, damage and transport and such other risks as Capability Resources may require;
- (b) Pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorises Capability Resources to receive all insurance monies;
- (c) Not do or permit or allow to be done anything which might or could prejudice any insurance of the Equipment;
- (d) Maintain policies of insurance for third party and public liability indemnity cover of not less than 10 million dollars.

(e) .

#### 43 Indemnities

The Customer indemnifies Capability Resources and its officers, employees and agents from and against all Claims that may arise as a result of or in connection with:

- (a) the delivery, installation, inspection, use, dismantling and collection of the Equipment;
- (b) the preparation of the Site for delivery or installation of Equipment; or
- (c) the personal injury or death to any person or loss or damage to any property (including the Equipment) or environmental loss arising from or in connection with the possession or use of the Equipment.

### PART 3 – SALE OF EQUIPMENT

#### 44 Application

The provisions described in this Part 3 apply to a Contract if the Customer has accepted a Quote for the purchase of, or otherwise has agreed in writing to purchase, Equipment from Capability Resources.

#### 45 Sale of Equipment

45.1 Capability Resources will supply the Equipment to the Customer as described in the applicable Quote.

45.2 Risk in the Equipment passes to the Customer on delivery in accordance with clause 45.4

45.3 Title in the Equipment does not pass to the Customer until the Customer has paid for the Equipment in full in accordance with the applicable Contract.

45.4 Delivery will be taken to have occurred:

- (a) at the time when the Equipment is delivered to the Site (including by collection by or on behalf of the Customer); or
- (b) if a Customer's representative is not able to take delivery of the Equipment at the Site at a delivery time made known to the Customer by Capability Resources for any reason, Capability Resources may return the Equipment to Capability Resources' premises or leave the Equipment at the Site and delivery will be taken to have occurred if the Equipment is:
  - (1) returned to Capability Resources' premises, at 5:00 pm (local time) on the date of such attempted delivery; or
  - (2) left at the Site, at the time when the Equipment is left at the Site.

45.5 The Customer acknowledges and accepts:

- (a) it is liable for all costs incurred in returning the Equipment to Capability Resources' premises under clause 45.4(b)(1); and
- (b) Capability Resources is not liable for any Claim arising as a result of or in connection with the Equipment being left at the Site under clause 45.4(b)(2).

45.6 Any Delivery Date is an estimate only and Capability Resources is not liable to the Customer for any Claim arising from late or non-delivery of Equipment. Any Delivery Date requested by the Customer must not be earlier than any delivery lead time made known by Capability Resources to the Customer.

45.7 Capability Resources may deliver Equipment by instalments and each instalment will be deemed to be sold by Capability Resources to the Customer under a separate Contract. Failure of Capability Resources to deliver any instalment will not entitle the Customer to cancel the balance of the instalments. If the Customer defaults in payment for any instalment, Capability Resources may elect to treat the default as a breach of all Contracts related to the applicable Equipment.

45.8 Capability Resources will use reasonable endeavours to ensure the Customer receives the full benefit of all warranties provided by any manufacturer of any Equipment but, except as otherwise expressly stated in a Contract, does not make any warranties or representations in relation to the Equipment.

#### 46 Storage

46.1 At the request of Capability Resources, the Customer must pay storage charges to Capability Resources at commercial rates reasonably determined by Capability Resources for the period of time during which any Equipment is stored at Capability Resources' premises after Delivery.

46.2 Storage of Equipment at Capability Resources' premises after the Delivery Date will be at the Customer's risk.

### PART 4 – LABOUR HIRE SERVICES

#### 47 Application

47.1 The provisions described in this Part 4 apply to a Contract if the Customer has accepted a Quote for the purchase of, or otherwise has agreed in writing to purchase, Labour Hire Services from Capability Resources.

#### 48 Labour Hire Services

48.1 Capability Resources will not commence performing Labour Hire Services until a valid Customer Order Number is received.

48.2 Capability Resources will use all reasonable efforts to provide Temporary Staff Members with the appropriate skills to perform the Labour Hire Services and agree that Temporary Staff Members are at all times employees of Capability Resources under the Customer's direction, control and supervision. Capability Resources is not responsible for Labour Hire Services performed by a Temporary Staff Member.

48.3 Capability Resources will supply Temporary Staff Members in a fashion that is as timely to the Customer's needs as is reasonably practical.

48.4 Capability Resources may replace a Temporary Staff Member from time to time with other staff who are suitably qualified. Capability Resources will endeavour to provide notice of such replacement where practicable.

48.5 By requesting the Labour Hire Services, the Customer accepts the rates set out in the applicable Quote or Schedule of Rates. The Customer agrees to pay the applicable rate set out in the Quote or Schedule of Rates for each hour or part thereof worked by each Temporary Staff Member who performs the Labour Hire Services. An authorised member of the Customer's staff will be required to validate Capability Resources Temporary Staff Member timesheets. Validation indicates satisfaction with the work completed.

48.6 The Customer must immediately notify Capability Resources if it intends to change the scope or nature of the Labour Hire Services, prior to the Temporary Staff Member commencing the changed Labour Hire Services, so that Capability Resources can ensure the Temporary Staff Member has the appropriate skills and training to perform the changed Labour Hire Services and so that an appropriate risk assessment can be performed on the relevant site. Capability Resources reserves the right to change the hourly rate of a Temporary Staff Member to one appropriate to the nominated skill requirement and to adjust the Quote or Schedule of Rates accordingly.

48.7 Capability Resources will arrange for all Temporary Staff Members to execute a confidentiality agreement in such form and in a time frame reasonably required by the Customer.

#### 49 Temporary Staff Member performance concerns

49.1 The Customer should advise Capability Resources as soon as is practical if it is not satisfied with the performance of the Labour Hire Services, or the behaviour of a Temporary Staff Member.

49.2 The Customer must only communicate directly with a Temporary Staff Member in relation to their performance or behaviour issues if:

- (a) their performance or behavioural issues are of a life threatening or serious nature; and
- (b) the Customer immediately notifies Capability Resources with full details of what was communicated to the Temporary Staff Member.

49.3 By entering into a Contract, the Customer agrees that only Capability Resources may:

- (a) direct a Temporary Staff Member to discontinue performing the Labour Hire Services;
- (b) remove a Temporary Staff Member from the Site;
- (c) issue a Temporary Staff Member with any form of disciplinary action; or
- (d) terminate the employment of the Temporary Staff Member with Capability Resources.

#### 50 Independent contractors

The Customer may from time to time elect to engage an independent contractor through Capability Resources. Independent contractors are not employees of Capability Resources and are hired by the Customer under a specific contract for Services, copies of which can be provided on the Customer's request by a Capability Resources representative.

#### 51 Minimum charges

51.1 A minimum charge of 4 hours at the associated rate will apply for all site work.

51.2 A minimum of 8 hours will be charged for all work conducted where overnight accommodation is required.

51.3 Short notice cancellation of a Temporary Staff Member (less than 24 hours) will result in a 4 hour charge at the applicable rate.

51.4 Administration by Capability Resources will be charged at cost plus 10%

#### 52 Establishment costs including inductions

All costs associated with site inductions, etc will be charged to the Customer at cost plus 10%. The Customer will also be charged the appropriate hourly rate set out in the applicable Contract for the time taken to complete the inductions.

### 53 Travel, accommodation and vehicles expenses

53.1 Travel time to and from the Customer's Site will be charged to the Customer at the applicable hourly rate set out in the Quote or Schedule of Rates, and will be calculated based on the travel time between the Customer's Site and:

- (a) the employee's normal place of work; or
- (b) if the employee is working away, the employee's place of accommodation.

53.2 Travel (air fares, hire car etc), accommodation and meal costs will be charged to the Customer at cost price plus 10%. At times Capability Resources will apply the ATO Taxation Determination in relation to reasonable travel and overtime meal allowance expense amounts to reimburse employees for travel and accommodation and that amount will be charged to the Customer at cost plus 10%.

53.3 In addition to travel time charged at applicable hourly rates, travel using a Capability Resources vehicle exceeding a 70km radius from the employee's normal place of work or accommodation (as the case may be) will be charged to the Customer at the rate per kilometre specified in the Quote or Proposal.

53.4 The rates described in this clause 53 does not include provision of site vehicles. A daily rate will apply to site vehicles based on the vehicle type and the nature of the Customer's use of the vehicle.

### 54 Supply of parts

Minor repairs and replacement of non-compliant parts will be done at the Customer's request. Parts will be charged in addition to Labour Hire Services and can be quoted on request.

### 55 Auxiliary Machinery

Use of auxiliary machinery or items (i.e. EWP, boom lifts, etc.) will be at the Customers cost.

### 56 Invoicing

Unless otherwise agreed in writing, Capability Resources will invoice the Customer for Labour Hire Services fortnightly.

### 57 Liabilities and Indemnities

57.1 Capability Resources is not liable for, and the Customer releases Capability Resources from all loss or liability that may arise in respect of, all acts or omissions of Temporary Staff Members, including any act or omission that occurs while a Temporary Staff Member is:

- (a) performing professional, health care, scientific, engineering, blue collar, technical or similar services;
- (b) performing Labour Hire Services in workplaces which are unattended or have inadequate or inappropriate internal controls or safeguards;
- (c) handling cash, negotiable instruments, valuables, merchandise or any other property of value;
- (d) operating, and referred by Capability Resources, as independent operating contractors; or
- (e) assigned to payroll activities.

57.2 Without limiting clause 57.1 above, the Customer releases Temporary Staff Members at its sole risk and releases Capability Resources and Temporary Staff Members from all claims or liability for the loss or damage to property owned, operated or leased by the Customer and property otherwise in its custody, care or control, including motor vehicles, trucks and their contents.

57.3 The Customer indemnifies Capability Resources against all claims, costs, liabilities, damages or Loss suffered or incurred as a result of:

- (a) a breach of a Contract by the Customer or its employees without limitation including any termination of employment of a Temporary Staff Member;
- (b) any act or omission by the Customer, its employees or agents; or
- (c) any breach of work health and safety laws, including but not limited to incidents involving contaminants, pollutants, hazardous substances or environmental laws.

57.4 To the extent permitted by Law, Capability Resources' liability for Loss or damages that may arise in connection with the Labour Hire Services under contract, tort or under any Law is limited to the cost of the resupply of all or part of the Labour Hire Services (as appropriate) and excludes all consequential or indirect loss or damage or punitive or exemplary damages.

### 58 Insurance

58.1 Capability Resources will maintain the following insurance policies in relation to Capability Resources and Temporary Staff Members:

- (a) workers' compensation, in accordance with all relevant Laws;
- (b) public liability insurance for at least \$10 million; and
- (c) professional indemnity insurance.

58.2 Capability Resources will provide the Customer with evidence of insurance within 14 days if such a request is made by the Customer in writing.

58.3 The policies are subject to exclusions and deductibles and may not cover or be available to the Customer in part or at all.

58.4 The Customer must not cause Capability Resources to be in breach of the conditions of any insurances through any act or omission on its part.

58.5 The Customer must maintain the following insurance policies for the Term:

- (a) public liability insurance for at least \$10 million; and
- (b) motor vehicle (including third party personal injury, own damage, third party property damage liability and third party personal injury gap) for any vehicle operated by a Temporary Staff Member.

### 59 Industrial relations and employment

59.1 Capability Resources must comply with all legal requirements and the conditions of employment that have been agreed with Temporary Staff Members including all applicable Enterprise Agreements.

59.2 Capability Resources will be responsible for all wages and remuneration payable to Temporary Staff Members, including associated statutory employment costs such as payroll tax and superannuation payments.

59.3 The Customer must inform Capability Resources of any awards or agreements applicable to the Site where a Temporary Staff Member is to perform the Labour Hire Services.

59.4 If there is any change in the nominated rates of pay applicable to a Temporary Staff Member then the Customer:

- (a) must pay Capability Resources the amounts due to that Temporary Staff Member from the applicable date and the proportional change in margin due to Capability Resources; and
- (b) indemnifies Capability Resources against all claims made by, or on behalf of a Temporary Staff Member that may result from such mandatory change.

59.5 The Customer must not do anything that may cause Capability Resources to breach any employment conditions. Capability Resources will supply evidence of statutory compliance with such conditions (where it is available) within 7 days after receipt of a written request.

59.6 Capability Resources reserves the right to increase the rates set out in the Quote or Schedule of Rates from an effective date from which changes to statutory on-costs or award provisions apply.

59.7 With the Customer's agreement, Capability Resources will review the salaries of Temporary Staff Members who have provided more than 12 months continuous service to the Customer.

59.8 The Customer must provide Temporary Staff Members with a suitable and safe workplace that complies with the relevant work health and safety Laws as described in clause 60.

### 60 Work Health and Safety

60.1 The Customer must ensure that it and all Temporary Staff Members comply with all:

- (a) applicable work health and safety Laws;
- (b) relevant Australian Standards relating to work health and safety;
- (c) codes of practice applying to any part of Services; and
- (d) all requirements of the Customer in relation to work health and safety.

60.2 The Customer must also provide all supervision, instruction (including inductions) and training necessary to ensure that the Labour Hire Services are performed safely by Temporary Staff Members, including provision of any information and personal protective equipment relating to hazardous substances or other conditions of employment where personal protective equipment is required.

60.3 Prior to a Temporary Staff Member commencing the Labour Hire Services, the Customer must disclose to Capability Resources the full history of all health and safety incidents and accidents of the Customer, including at the Site where the Temporary Staff Member will be performing the Labour Hire Services and any other relevant work health and safety material in relation to the Customer's business. The Customer acknowledges and accepts that Capability Resources will rely on that information when conducting a risk assessment of the Customer's workplace.

60.4 Capability Resources and the Customer will jointly agree on the provision of any training, equipment or workplace changes necessary for the safe performance of the Labour Hire Services by Temporary Staff Members.

60.5 The Customer must notify Capability Resources immediately of any incidents, injuries or non-conformance issues relating to the Labour Hire Services and affecting a Temporary Staff Member and, where required by State or Territory legislation, also notify the relevant authorities.



60.6 The Customer agrees that Capability Resources may visit the Customer's workplace from time to time to review safety arrangements for Temporary Staff Members. The Customer agrees to make any appropriate changes to help reduce the risks in its workplace.

60.7 The Customer acknowledges that Capability Resources does not have control of the Customer's workplace and that it relies on the Customer to inform it of potential risks to the health, safety and welfare of Temporary Staff Members. The Customer undertakes and agrees to notify Capability Resources of all potential risks affecting Temporary Staff Members, including any intended change to the scope or nature of the Labour Hire Services.

60.8 Capability Resources encourages its Temporary Staff Members to report any unsafe work conditions to their immediate supervisor. The Customer must immediately notify Capability Resources of all safety risks, including incidents affecting Temporary Staff Members. The Customer must participate in the rehabilitation of Temporary Staff Members who become injured in connection with the performance of the Labour Hire Services.

60.9 Capability Resources has a Drug and Alcohol Policy that prohibits its employees from working under the influence of certain performance inhibiting substances. The Customer undertakes and agrees to notify Capability Resources of potential risks affecting Temporary Staff Members or of any breaches of this policy.

60.10 All Temporary Staff Members commencing work for the Customer must undergo a site induction in accordance with the Customer's requirements prior to performing the Labour Hire Services for the Customer to ensure full understanding of requirements in relation to:

- (a) emergency procedures including evacuation;
- (b) rules and schemes
- (c) adherence to the safe working procedures;
- (d) site familiarisation; and
- (e) other site specific training as required.

## PART 5 – CONSULTING AND PROFESSIONAL SERVICES

### 61 Application

The provisions described in this Part 5 apply to a Contract if the Customer has accepted a Quote for the purchase of, or otherwise has agreed in writing to purchase, Consulting and Professional Services from Capability Resources.

### 62 Consulting and Professional Services

62.1 Capability Resources will:

- (a) provide the Consulting and Professional Services, including Risk Assessments, Safety Procedures and/or Equipment Inspections for Compliance with Australian Standards in a diligent and professional manner and to the standard of skill and care expected of a person experienced in the provision of Consulting and Professional Services; and
- (b) ensure its employees, contractors and agents are competent and have the necessary skills to carry out Consulting and Professional Services.

### 63 Customer's obligations

63.1 The Customer must:

- (a) provide Capability Resources with all materials and information (**Materials**) required by Capability Resources to adequately perform the Consulting and Professional Services;
- (b) ensure that the Materials provided to Capability Resources are virus free, accurate and complete in all respects;
- (c) ensure that the Materials are provided to Capability Resources in sufficient time to enable Capability Resources to perform its obligations under a Contract;
- (d) answer Capability Resources' questions related to the provision of the Consulting and Professional Services in a timely manner;
- (e) promptly make any decisions needed by Capability Resources to perform the Consulting and Professional Services; and
- (f) provide any other facilities, resources or access reasonably required by Capability Resources in order to perform the Consulting and Professional Services.

63.2 The Customer acknowledges:

- (a) Capability Resources does not inspect or check the accuracy of any Material provided to it by the Customer; and
- (b) it is solely responsible for the accuracy and completeness of the Material.

63.3 The Customer warrants:

- (a) it has complied with all Laws relating to the collection, use and transfer, under a Contract, of any Material which contains personal information including without

limitation the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth);

- (b) it has the authority to allow Capability Resources and its personnel to use any facilities, equipment and resources which the Customer provides to Capability Resources and its personnel for use in connection with performing the Consulting and Professional Services;
- (c) it owns, or otherwise has the right to licence, the Intellectual Property Rights to Capability Resources and its personnel for use in connection with performing the Consulting and Professional Services;
- (d) its provision of the Material to Capability Resources does not infringe the Intellectual Property Rights of any third party;
- (e) the use, distribution or publication of any Material by Capability Resources necessary for the proper performance of any Service will not infringe the rights of any third party; and
- (f) all Material it will provide Capability Resources will not contain any offensive, pornographic, defamatory, morally reprehensible or illegal content.

### 64 Minimum charges

64.1 A minimum charge of 4 hours at the associated rate will apply for all site work.

64.2 A minimum of 8 hours will be charged for all work conducted where overnight accommodation is required.

64.3 Administration by Capability Resources will be charged at cost plus 10%

### 65 Establishment costs including inductions

All costs associated with site inductions, etc will be charged to the Customer at cost plus 10%. The Customer will also be charged the appropriate hourly rate set out in the applicable Contract for the time taken to complete the inductions.

### 66 Travel, accommodation and vehicles expenses

66.1 Travel time to and from the Customer's Site will be charged to the Customer at the applicable hourly rate set out in the Quote or Schedule of Rates, and will be calculated based on the travel time between the Customer's Site and:

- (a) the employee's normal place of work; or
- (b) if the employee is working away, the employee's place of accommodation.

66.2 Travel (air fares, hire car etc), accommodation and meal costs will be charged to the Customer at cost price plus 10%. At times Capability Resources will apply the ATO Taxation Determination in relation to reasonable travel and overtime meal allowance expense amounts to reimburse employees for travel and accommodation and that amount will be charged to the Customer at cost plus 10%.

66.3 In addition to travel time charged at applicable hourly rates, travel using a Capability Resources vehicle exceeding a 70km radius from the employee's normal place of work or accommodation (as the case may be) will be charged to the Customer at the rate per kilometre specified in the Quote or Proposal.

66.4 The rates described in this clause 66 does not include provision of site vehicles. A daily rate will apply to site vehicles based on the vehicle type and the nature of the Customer's use of the vehicle.