

1. Definitions

- 1.1 "AF" means Joncal Aust Pty Ltd T/A Allan's Fencing, its successors and assigns or any person acting on behalf of and with the authority of Joncal Aust Pty Ltd T/A Allan's Fencing.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by AF to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by AF to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by AF to the Client.
- 1.5 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between AF and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with AF's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and AF.

3. Change in Control

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

4. Price and Payment

- 4.1 At AF's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by AF to the Client; or
 - (b) AF's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of one hundred and twenty (120) days.
- 4.2 AF reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to AF in the cost of labour or which are beyond AF's control.
- 4.3 At AF's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by AF, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) by way of instalments/progress payments in accordance with AF's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by AF.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and AF.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to AF an amount equal to any GST AF must pay for any supply by AF under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods/Equipment

- 5.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at AF's address; or
 - (b) AF (or AF's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 5.2 At AF's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then AF shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

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- 5.4 AF may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by AF to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and AF will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 5.6 Subject to clause 5.7 it is AF's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.7 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that AF claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond AF's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify AF that the site is ready.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, AF is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AF is sufficient evidence of AF's rights to receive the insurance proceeds without the need for any person dealing with AF to make further enquiries.
- 6.3 If the Client requests AF to leave Goods outside AF's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 Whilst AF will take all due care during installation AF will not accept any responsibility for tiles or pavers damaged during installation.
- 6.5 Where fencing is installed on a retaining wall AF shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 6.6 AF reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.
- 6.7 Where the Client has supplied materials for AF to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. AF shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 6.8 The Client acknowledges that Goods supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 6.9 AF will inform the Client of all or any relevant characteristics of the product/s chosen by the Client including limitations on use of same as defined in the manufacturer's warranty conditions.

7. Access

- 7.1 The Client shall ensure that AF has clear and free access to the work site at all times to enable them to undertake the Services. AF shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of AF.

8. Underground Locations

- 8.1 Prior to AF commencing any work the Client must advise AF of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst AF will take all care to avoid damage to any underground services the Client agrees to indemnify AF in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

9. Accuracy of Customers Plans and Measurements

- 9.1 AF shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, AF accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or AF places an order based on these measurements and quantities. AF accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

10. Client's Responsibilities

- 10.1 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause then AF accepts no responsibility for installation decisions that need to be made by AF in the Client's absence.
- 10.2 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow AF clear access along the proposed fence line prior to commencement of work by AF unless otherwise agreed in writing between AF and the Client. Under no circumstances will AF handle removal of asbestos product.
- 10.3 The Client shall provide AF with a suitable free power source.
- 10.4 AF shall not be responsible for digging land out under fence lines nor removal of soil from the work site.

11. Title To Goods

- 11.1 AF and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid AF all amounts owing to AF; and
 - (b) the Client has met all of its other obligations to AF.
- 11.2 Receipt by AF of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to AF on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for AF and must pay to AF the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for AF and must pay or deliver the proceeds to AF on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of AF and must sell, dispose of or return the resulting product to AF as it so directs.
 - (e) the Client irrevocably authorises AF to enter any premises where AF believes the Goods are kept and recover possession of the Goods.
 - (f) AF may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AF.
 - (h) AF may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by AF to the Client.
- 12.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AF may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, AF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of AF;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of AF;
 - (e) immediately advise AF of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 AF and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by AF, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by AF under clauses 12.3 to 12.5.

12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

13.1 In consideration of AF agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Client indemnifies AF from and against all AF's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AF's rights under this clause.

13.3 The Client irrevocably appoints AF and each director of AF as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Client's Disclaimer

14.1 The Client hereby disclaims any right to rescind, or cancel any contract with AF or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by AF and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

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

15.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify AF in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow AF to inspect the Goods/Equipment.

15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

15.3 AF acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AF makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. AF's liability in respect of these warranties is limited to the fullest extent permitted by law.

15.5 If the Client is a consumer within the meaning of the CCA, AF's liability is limited to the extent permitted by section 64A of Schedule 2.

15.6 If AF is required to replace the Goods under this clause or the CCA, but is unable to do so, AF may refund any money the Client has paid for the Goods.

15.7 If the Client is not a consumer within the meaning of the CCA, AF's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Client by AF at AF's sole discretion;
- (b) limited to any warranty to which AF is entitled, if AF did not manufacture the Goods;
- (c) otherwise negated absolutely.

15.8 AF does not offer any additional warranty other than any warranty to which the Client is entitled from the manufacturer.

15.9 Subject to this clause 15, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 15.1; and
- (b) AF has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

15.10 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, AF shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Client failing to properly maintain or store any Goods/Equipment;
- (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
- (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Client failing to follow any instructions or guidelines provided by AF;
- (e) fair wear and tear, any accident, or act of God.

15.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by AF as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that AF has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 15.11.

15.12 AF may in its absolute discretion accept non-defective Goods for return in which case AF may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

15.13 Notwithstanding anything contained in this clause if AF is required by a law to accept a return then AF will only accept a return on the conditions imposed by that law.

16. Intellectual Property

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

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes AF any money the Client shall indemnify AF from and against all costs and disbursements incurred by AF in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AF's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies AF may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions AF may suspend or terminate the supply of Goods/Equipment to the Client. AF will not be liable to the Client for any loss or damage the Client suffers because AF has exercised its rights under this clause.
- 17.4 Without prejudice to AF's other remedies at law AF shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AF shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to AF becomes overdue, or in AF's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Compliance with Laws

- 18.1 The Client and AF shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 18.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

19. Cancellation

- 19.1 AF may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice AF shall repay to the Client any money paid by the Client for the Goods/Equipment. AF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by AF as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Dispute Resolution

- 20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

21. Privacy Act 1988

- 21.1 The Client agrees for AF to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by AF.

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- 21.2 The Client agrees that AF may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 21.3 The Client consents to AF being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 21.4 The Client agrees that personal credit information provided may be used and retained by AF for the following purposes (and for other purposes as shall be agreed between the Client and AF or required by law from time to time):
- (a) the provision of Goods/Equipment; and/or
 - (b) the marketing of Goods/Equipment by AF, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods/Equipment.
- 21.5 AF may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 21.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that AF is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of AF, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by AF has been paid or otherwise discharged.

22. Unpaid Seller's Rights

- 22.1 Where the Client has left any item with AF for repair, modification, exchange or for AF to perform any other service in relation to the item and AF has not received or been tendered the whole of any moneys owing to it by the Client, AF shall have, until all moneys owing to AF are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of AF shall continue despite the commencement of proceedings, or judgment for any moneys owing to AF having been obtained against the Client.

23. Equipment Hire

- 23.1 Equipment shall at all times remain the property of AF and is returnable on demand by AF. In the event that Equipment is not returned to AF in the condition in which it was delivered AF retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all AF shall have right to charge the Client the full cost of replacing the Equipment.
- 23.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by AF to the Client.

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- 23.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, AF's interest in the Equipment and agrees to indemnify AF against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 24. Building and Construction Industry Security of Payments Act 1999**
- 24.1 At AF's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 25. General**
- 25.1 The failure by AF to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AF's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which AF has its principal place of business, and are subject to the jurisdiction of the Forster Courts in that state.
- 25.3 Subject to clause 15 AF shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AF of these terms and conditions (alternatively AF's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 25.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by AF nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 AF may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.6 The Client agrees that AF may amend these terms and conditions at any time. If AF makes a change to these terms and conditions, then that change will take effect from the date on which AF notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for AF to provide Goods/Equipment to the Client.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.