

By completing the Credit Application or ordering and/or hiring Equipment from RAM, the Applicant agrees that:

## 1. AGREEMENT

- 1.1. These Terms and Conditions of Trade, together with:
  - 1.1.1. each Hire Schedule provided to the Customer by RAM, whether signed or not; and
  - 1.1.2. any conditions specific to the type of Equipment ("Special Conditions") the Customer has hired; and
  - 1.1.3. each Tax Invoice from RAM set out the terms of the agreement ("Agreement") between the Customer and RAM.
- 1.2. Any terms contained in any document supplied by the Customer, including any terms on the Customer's purchase order, will not form part of the Agreement.
- 1.3. No additional terms and conditions (including any terms contained in any purchase order supplied by the Customer) apply except as varied in accordance with Clause 18.
- 1.4. If there is more than one individual Customer, each is jointly and severally bound by the Terms and Conditions of Trade.
- 1.5. The invalidity or unenforceability of any provision of the Terms and Conditions of Trade shall not affect the validity or enforceability of the remaining provisions.
- 1.6. The Customer acknowledges that all hire and/or purchase arrangements are made relying solely upon the Customer's own skill and judgment. Where RAM gives advice, recommendations, information, assistance and/or service to the Customer regarding the suitability or purpose of the Equipment, it is given in good faith and should not be relied upon by the Customer.

## 2. DEFINITIONS

In these Terms and Conditions of Trade, unless a contrary intention is stated:

- 2.1. "ACL" is an abbreviation of 'Australian Consumer Law' which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended from time to time;
- 2.2. "COD" is an abbreviation of 'cash on delivery' and means the Customer is required to pay the Hire Charges and other fees, charges and costs that become due and payable under this Agreement in full (with no deduction or set-off), on or prior to, delivery or collection of the Equipment;
- 2.3. "Customer" means the company, partnership, sole trader or trustee who has lodged the 'Credit Application' and/or purchases, hires or orders Equipment from RAM, and it includes the Customer's personal representatives, successors and permitted assigns;
- 2.4. "Credit/Trade Application" means the application for a Credit Account application completed by the Customer which includes the Terms and Conditions of Trade and Personal Guarantee, Indemnity and Charge;
- 2.5. "Credit/Trade Account" means any billing arrangement RAM has extended to the Customer upon RAM's approval of the Credit Application;
- 2.6. "Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment;
- 2.7. "Expected Off Hire Date" means the date that the Customer expects the Hire Period to end. This date is set out in the Hire Schedule.
- 2.8. "Force Majeure Event" means any event or circumstance, regardless of whether it was foreseeable, that was not caused by RAM and which prevents RAM from complying with, or performing, any of its obligations under any contract with the Customer;
- 2.9. "Equipment" means any equipment, and any component part of or accessory thereto, supplied or hired by RAM to the Customer, or ordered by the Customer but not yet supplied;
- 2.10. "Hire Schedule" means the document provided by RAM to the Customer which includes details of the Equipment the Customer has hired, the Hire Charge, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment;
- 2.11. "Hire Period" means the period described in clause 4;
- 2.12. "LTD Waiver" has the meaning set out in clause 10;
- 2.13. "Off Hire Date" has the meaning set out in clause 5.7;
- 2.14. "PMSI" means a purchase money securities interest and has the meaning given in section 14 of the PPSA;
- 2.15. "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time;
- 2.16. "PPSR" means the Personal Property Securities Register established under section 147 of the PPSA;
- 2.17. "Price" means the price payable for the hire of the Equipment (which includes the Hire Charges and Other Charges) and/or the price payable for the purchase of the Equipment and any other applicable charges;
- 2.18. "RAM" means RAM Equipment Pty Ltd ACN 007 939 988, its successors and permitted assigns; and
- 2.19. "Security Interest" has the meaning given in section 12 of the PPSA;

- 2.20. "Tax Invoice" means a tax invoice issued by RAM to the Customer;
- 2.21. "Verification Statement" has the meaning given in section 155 of the PPSA.

## 3. DELIVERY

- 3.1. Delivery of the Equipment is taken to occur ("Delivery") on the earlier of the following:
  - 3.1.1. when the Customer takes possession of the Equipment; or
  - 3.1.2. if the Customer requests delivery and collection of the Equipment, the time RAM delivers the Equipment to the address in the Hire Schedule or the Tax Invoice.
- 3.2. RAM shall not be liable for any loss or damage, including consequential loss or damage, arising from any delay in delivery or failure to deliver or supply Equipment, either whole or in part, due to any Force Majeure Event

## 4. HIRE PERIOD (APPLIES TO HIRE ONLY)

- 4.1. The Hire Period commences ("On Hire Date") upon Delivery.
- 4.2. The Hire Period is for finite term and ends when: the Equipment is back in RAM's control or possession; the Customer notifies RAM that the Equipment is ready for collection; or, before the expiry of one year from the On Hire Date ("Maximum Hire Period"), whichever is earlier.
- 4.3. The Hire Period includes weekends and public holidays and for the avoidance of doubt, RAM does not consent to the Customer having uninterrupted possession of the Equipment for longer than 12 months from the On Hire Date, unless expressly agreed to by RAM in writing.
- 4.4. A minimum Hire Period may apply in respect of certain items of Equipment ("Minimum Hire Period"). RAM will advise the Customer at the time of hiring if a Minimum Hire Period applies. If the Customer returns the Equipment to RAM before the expiration of the Minimum Hire Period, the Customer is required to pay all Hire Charges in respect of the Minimum Hire Period.

## 5. CALCULATION OF HIRE CHARGES (APPLIES TO HIRE ONLY)

- 5.1. Hire Charges will commence from the On Hire Date and continue until the date the Customer notifies RAM that the Equipment will be available for collection (the Off Hire Date). The Equipment must be available for collection by no later than 7:00am ACST on the Off Hire Date, otherwise RAM reserves the right to charge additional Hire Charges. For the avoidance of doubt, the Expected Off Hire Date is not considered to be the Customer's notice to RAM that the Equipment is available for collection.
- 5.2. The Customer will pay RAM for the hire of the Equipment at the Hire Charge set out in the Hire Schedule.
- 5.3. The Hire Schedule will specify the type of rate which will apply to the Customer and the method of calculation.
- 5.4. Hire Charges shall be calculated by the number of days recorded on the timing device whilst the Equipment is in the Customer's possession and:
  - 5.4.1. additional Hire Charges as set out in the Hire Schedule will apply if the Equipment is used for more than 8 hours per day or more than 40 hours per week (e.g. if the Equipment is used for 24 hours in one day, the Customer will be charged for 3 full days' hire);
  - 5.4.2. if the Equipment is returned prior to 7am on the Off Hire Date, Hire Charges for that day will still be charged (e.g. if Delivery occurs at 8am on Wednesday (the On Hire Date) and the Equipment is returned at 6pm on the Thursday of the same week (the day prior to the Off Hire Date), the Customer will be charged for 2 full days' hire);
  - 5.4.3. if the Equipment is returned after 7am on the Off Hire Date, Hire Charges for the following day will be charged (e.g. if Delivery occurs at 3pm on Monday and the Equipment is returned at 10am on the Wednesday of the same week (being the Off Hire Date), the Customer will be charged for 3 full days' hire);
  - 5.4.4. the date upon which the Customer advises of termination shall in all cases be treated as a full day's hire; and
  - 5.4.5. where the timing device is found not to be working either during the Hire Period or upon termination thereof, RAM will estimate the hours used and the onus is on the Customer to prove that the estimate is not correct.
- 5.5. The Customer will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, the Customer must continue to pay the Hire Charges and other charges after the Expected Off Hire Date if the Customer has not returned the Equipment to RAM by the Expected Off Hire Date. This obligation survives termination of the Agreement.
- 5.6. No allowance whatsoever can be made for time during which the Equipment is not in use for any reason (including any stand-down time, wet weather, public holidays, or rostered days off, etc.), unless RAM confirms special prior arrangements in writing.
- 5.7. In the event of Equipment breakdown, provided the Customer notifies RAM immediately, Hire Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of, or attributable to, the Customer.

## 6. OTHER CHARGES

- 6.1. In addition, the Customer agrees to pay:
- 6.1.1. for any consumables, fuel or trade materials RAM supplies to the Customer;
  - 6.1.2. if the Customer requires RAM to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule and/or Tax Invoice. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by the Customer;
  - 6.1.3. if the Customer does not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
  - 6.1.4. a charge for pumping out waste tanks or refilling water or fuel tanks;
  - 6.1.5. any stamp duty or GST arising out of this Agreement;
  - 6.1.6. any other applicable levies, fines, penalties and any other government charges arising out of the Customer's use of the Equipment;
  - 6.1.7. charges for payment made by credit card: VISA and Mastercard up to 1.50% of the Price, and American Express and Diners Club up to 2.50% of the Price;
  - 6.1.8. if the Customer requests operational guidance or training on the use of the Equipment and RAM staff are available to provide this, the cost for the provision of these services at rates agreed with RAM;
  - 6.1.9. charges in connection with the administration of the Customer's Credit Account;
  - 6.1.10. any reasonable charges incurred by RAM if RAM is unable to inspect or carry out maintenance on the Equipment during normal working hours;
  - 6.1.11. the replacement value of any item of Equipment that is for whatever reason destroyed, written-off or not returned to RAM;
  - 6.1.12. all costs of repairing any damage to the Equipment caused by:
    - 6.1.12.1 any of the events referred to in clause 10.5 below;
    - 6.1.12.2 the ordinary use of the Equipment up to an amount equal to 10% of the replacement value of the Equipment;
  - 6.1.13. any insurance excess payable in relation to a claim made by either the Customer or RAM in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or RAMs; and
  - 6.1.14. if applicable, the LTD Waiver charge as determined and set out in clause 10.

## 7. PAYMENT

- 7.1. Unless otherwise notified in writing by RAM to the Customer, which notification may be in the form of a Tax Invoice from RAM with specified payment terms, the Customer is required to pay the Price, all Hire Charges and other fees, charges and costs that become due and payable under this Agreement, in full (with no deduction or set-off), within 30 days of the date of the relevant Tax Invoice. At RAM's sole discretion, the Customer may be required to pay the amount:
  - 7.1.1. on the date specified on any other Tax Invoice or other form as being the date for payment;
  - 7.1.2. on COD terms;
  - 7.1.3. before Delivery;
  - 7.1.4. by way of instalments/progress payments in accordance with RAM's payment schedule; or
  - 7.1.5. within 7 days of the date of the Tax Invoice.
- 7.2. The Customer agrees that RAM may debit the Customer's credit card, as provided in the Credit Application, in accordance with the payment terms between the Customer and RAM, to satisfy any part or all of the monies payable by the Customer to RAM under this Agreement.
- 7.3. At RAM's sole discretion the Price for Equipment shall be either:
  - 7.3.1. as indicated on any Hire Schedule provided by RAM to the Customer;
  - 7.3.2. as indicated on any Tax Invoice provided by RAM to the Customer;
  - 7.3.3. the price as at the date of Delivery according to RAM's current price list; or
  - 7.3.4. RAM's quoted price.
- 7.4. RAM reserves the right to change the Price:
  - 7.4.1. if a variation to the Equipment which is to be supplied or hired is requested; or
  - 7.4.2. in the event of increases to RAM in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond RAM's control.
- 7.5. Any quotation given by RAM to the Customer is not an offer or obligation to hire or sell but an invitation to treat only. RAM will endeavour, but will not be obliged, to maintain the quotation price for a period of 30 days. However, RAM reserves the right to accept or reject any order. RAM is not obliged to hire or sell Equipment unless RAM accepts the Customer's order in writing.
- 7.6. At RAM's sole discretion, a non-refundable deposit may be required prior to any supply. RAM reserves the right not to provide the Equipment until such time as the required deposit is paid in full.
- 7.7. RAM reserves the right, at all times, to suspend or discontinue the supply or hire of Equipment to the Customer if the Customer is in default of any of these

terms or RAM apprehends (on reasonable grounds) that the Customer will be in default of any of these terms.

- 7.8. Where the Customer is on COD terms, RAM reserves the right not to deliver or provide the Equipment until payment of the Price has been received in full.
- 7.9. Any forbearance by RAM in respect of the Customer's failure to pay strictly in accordance with the Payment terms shall not constitute a waiver by RAM of its rights to payment nor will it be construed as an agreement to extend credit.
- 7.10. Where RAM has agreed to provide the Equipment to the Customer other than on COD terms:
  - 7.10.1. RAM reserves the right to suspend the Credit Account immediately if any payment becomes overdue;
  - 7.10.2. where credit facilities have been granted, RAM reserves the right to withdraw these facilities in the event of: any credit limit internally set by RAM, or trading terms, being exceeded; or in the event that RAM becomes aware of any factor that, in its opinion, materially affects the Customer's credit worthiness; and
  - 7.10.3. interest on overdue amounts may be charged at a rate of 1.0% per calendar month or part thereof, and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- 7.11. Any amounts received by RAM may be applied at RAM's discretion: first against interest, fees, charges, collection expenses and legal expenses; and second, towards any amount that the Customer owes to RAM from time to time for the hire and/or purchase of Equipment.
- 7.12. Without prejudice to any other remedies RAM may have, if at any time the Customer is in breach of any obligation (including payment terms) in this Agreement, RAM may suspend or terminate the supply of Equipment to the Customer. RAM will not be liable to the Customer for any loss or damage the Customer suffers because RAM has exercised its rights under this clause.
- 7.13. Without prejudice to RAM's other remedies at law RAM shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing from the Customer to RAM shall, whether or not due for payment, become due immediately if:
  - 7.13.1. the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, small business restructure, administration, receivership, enters into an arrangement with creditors or ceases to carry on business;
  - 7.13.2. any money payable to RAM becomes overdue, or in RAM's opinion the Customer will be unable to make a payment when it falls due.

## 8. CUSTOMER'S OBLIGATIONS TO RAM (APPLIES TO HIRE ONLY)

- 8.1. The Customer must:
  - 8.1.1. notify RAM immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - 8.1.2. satisfy itself at Delivery that the Equipment is suitable for its purpose;
  - 8.1.3. on termination of the Hire Period, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered (fair wear and tear accepted) to RAM.
- 8.2. The Customer must:
  - 8.2.1. operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - 8.2.2. ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
  - 8.2.3. wear suitable clothing and protective equipment when operating the Equipment as required or recommended by RAM or the manufacturer;
  - 8.2.4. comply with all occupational health and safety laws relating to the Equipment and its operation;
  - 8.2.5. ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
  - 8.2.6. conduct a job safety analysis prior to using the Equipment;
  - 8.2.7. ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
  - 8.2.8. display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- 8.3. The Customer must:
  - 8.3.1. keep the Equipment in good condition and in accordance with the manufacturer's and RAM's instructions (including, but not limited to, maintaining water, oil and fluid levels, cleaning, refuelling, lubricating and conduct routine servicing), at the Customer's cost;
  - 8.3.2. not in any way alter, modify, tamper with, damage or repair the Equipment without RAM's prior written consent;
  - 8.3.3. not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment; and
  - 8.3.4. not remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when the Customer returns the Equipment;

- 8.3.5. arrange for the emptying of any waste tanks and water carts;
- 8.3.6. keep RAM advised of the specific location of the Equipment at all times during the Hire Period;
- 8.3.7. employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
- 8.3.8. not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- 8.3.9. insure, or self-insure, RAM's interest in the Equipment 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 arising out of the Equipment;
- 8.3.10. not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 8.4. At all times during the Hire Period, the Customer must store the Equipment safely and securely and within their possession or control.
- 8.5. Noting that the Equipment is, at all times, RAM's property, the Customer consents to:
  - 8.5.1. RAM monitoring the location and hours of the Equipment remotely using GPS technology;
  - 8.5.2. RAM (or RAM's agent) entering the premises owned, occupied or used by the Customer to inspect or maintain the Equipment from time to time during the Hire Period during normal working hours. If RAM cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply. The Customer can also request to conduct a joint inspection of the Equipment with RAM at the end of the Hire Period;
  - 8.5.3. RAM (or RAM's agent) entering the premises owned, occupied or used by the Customer to take possession of the Equipment and RAM will not be liable for any damage thereby caused.
- 8.6. Whenever the Customer is moving the Equipment, the Customer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Customer, or any agent or contractor engaged by the Customer, must observe any safety directions advised by RAM and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- 8.7. The Customer warrants that the Customer will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- 8.8. The Customer must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). The Customer must advise RAM of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, the Customer must effectively decontaminate the Equipment, as well as provide RAM with written details of decontamination processes applied. If, in RAM's opinion acting reasonably, the Equipment is not capable of being decontaminated, the Customer will be charged for the replacement cost of the Equipment.
- 8.9. In the event that the Equipment breaks down or becomes unsafe, the Customer must:
  - 8.9.1. immediately stop using the Equipment and notify RAM;
  - 8.9.2. take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - 8.9.3. take all steps necessary to prevent any further damage to the Equipment; and
  - 8.9.4. not repair or attempt to repair the Equipment without the RAM's prior written consent.

## 9. EQUIPMENT (APPLIES TO HIRE ONLY)

- 9.1. The Customer acknowledges that RAM owns the Equipment and in all circumstances RAM retains absolute title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period).
- 9.2. The Customer acknowledges and agrees to:
  - 9.2.1. safe keep the Equipment and indemnify RAM for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer; and
  - 9.2.2. to keep RAM indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the Hire Period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 9.3. The Customer's rights to use the Equipment are as a bailee only.
- 9.4. Except in the circumstances set out in clause 15, the Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with the Equipment in any way.
- 9.5. In no circumstances will the Equipment be deemed to be a fixture.
- 9.6. The Customer is responsible for any loss, theft or damage to the Equipment

from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by RAM's actions.

- 9.7. The Customer must return the Equipment to RAM in the same clean condition and good working order it was in when hired, ordinary fair wear and tear excluded. If the Customer does not return the Equipment in such condition, RAM will charge the Customer a cleaning cost in accordance with clause 6.1.3 above.
- 9.8. Unless otherwise agreed in writing with RAM, it is the Customer's responsibility to return the Equipment to RAM during normal business hours.
- 9.9. If the Customer is in breach of this Agreement or if the Agreement or a Hire Period has been terminated, RAM may, at the Customer's cost, take all steps necessary (including legal action) to recover the Equipment, including entering the Customer's premises to do so and the Customer expressly consents to RAM entering the Customer's premises for the purposes of recovering the Equipment.

## 10. LOSS THEFT DAMAGE WAIVER (APPLIES TO HIRE ONLY)

- 10.1. The Loss Theft Damage Waiver (LTD Waiver) is not insurance, but is an agreement by RAM to limit the Customer's liability in certain circumstances for the loss, theft or damage for each item of Equipment to an amount equal to \$2,500.00 or 10% of the replacement cost of the Equipment, whichever is greater (LTD Waiver Excess).
- 10.2. Subject to clause 10.3 below, a fee of 10% of the replacement value of the Equipment (LTD Waiver Fee) is payable by the Customer in addition to the Hire Charges, is nonrefundable and will be set out in the Hire Schedule.
- 10.3. The Customer is not required to pay the LTD Waiver Fee if they can produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the replacement value of the Equipment. The Customer is responsible for any excess and any other costs associated with any insurance taken out by it under this clause and the Customer is responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss RAM suffers as a result of not being able to hire the Equipment.
- 10.4. Where the Customer has paid the LTD Waiver Fee, RAM agrees to waive any claim which it may have against the Customer for loss, theft or damage to the Equipment, if:
  - 10.4.1. for theft, the Customer has promptly reported the incident to the police and provided RAM with a written police report; and
  - 10.4.2. the Customer has co-operated with RAM and provided RAM with the details of the incident, including any evidence RAM requires; and
  - 10.4.3. the loss, theft or damage does not fall into one or more of the circumstances set out in clause 10.5; and
  - 10.4.4. the Customer has paid to RAM the LTD Waiver Excess.
- 10.5. Even if the Customer has paid the LTD Waiver Fee, RAM will not waive its rights to claim against the Customer for loss, theft or damage to the Equipment and the LTD Waiver will not apply if the loss, theft or damage:
  - 10.5.1. has arisen as a result of the Customer's breach of a clause of this Agreement;
  - 10.5.2. has been caused by the Customer's, or the Customer's agent's, negligent act or omission (including the misuse, abuse, overloading or exceeding the rated capacity of the Equipment, improper servicing or repairs of the Equipment by the Customer)
  - 10.5.3. has arisen as a result of the Customer's use of the Equipment in violation of any laws;
  - 10.5.4. has been caused by the Customer's failure to use the Equipment for its intended purpose or in accordance with RAM's instructions or the manufacturer's instructions;
  - 10.5.5. occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - 10.5.6. has been caused by collision with a bridge, car park, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
  - 10.5.7. is caused by vandalism;
  - 10.5.8. the Customer's failure to take reasonable precautions to protect the Equipment and mitigate any loss (including, but not limited to, failing to store the Equipment in a safe place);
  - 10.5.9. is caused by exposure to any corrosive or caustic substance, such as salt water, acid etc;
  - 10.5.10. is to items such as: hoses, cables, lights; cabins, seats, air conditioning; tyres, tubes; gas cylinders, batteries, fork/s; windscreens, mirrors, glass, or perspex.
  - 10.5.11. circumstances where a claim had been made by or against a third party.

## 11. DEFECTS

- 11.1. The Customer must inspect the Equipment upon Delivery and must within 4 hours of such time notify RAM in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident.
- 11.2. The Customer will, within a reasonable time following delivery, grant RAM



- 11.3. access to the Equipment in order to inspect for any alleged defects. Should the Customer fail to notify RAM within the specified period then the Equipment shall be deemed to be in compliance with the order and free from any defect whatsoever.

## 12. EXCLUSION OF LIABILITY AND INDEMNITIES

- 12.1. Subject to clause 12.3, and except as expressly provided to the contrary in this Agreement, all implied conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 12.2. RAM acknowledges that nothing in Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited ("Non-Excluded Guarantees"). This may include the consumer guarantees under the ACL. RAM acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.3. To the maximum extent permitted by law, where RAM is able to limit the Customer's remedy for a breach of the Non-Excluded Guarantees, then RAM's liability for a breach of the Non-Excluded Guarantees is limited to (at RAM's election):
- 12.3.1. the repair or replacement of the Equipment or the supply of substitute Equipment (or the cost of doing so); or
  - 12.3.2. refunding the Customer the Price paid for the Equipment.
- 12.4. Subject to RAM's obligations under the Non-Excluded Guarantees and to the maximum extent permitted by law, RAM's maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by the Customer under this Agreement. In calculating RAM's aggregate liability under this clause, the parties must include any amounts paid or the value of any Equipment replaced, repaired or supplied by RAM for a breach of any Non-Excluded Guarantees.
- 12.5. The Customer is liable for and indemnifies RAM against all liability, claims, damage, loss, expenses or costs (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against RAM and any environmental loss, cost, damage or expense) in respect of personal injury, damage to property, or a claim by a third party, in respect of the Customer's hire or use of the Equipment or the Customer's breach of the Agreement. The Customer's liability will be reduced to the extent that RAM's breach of the Agreement of negligence is causative of the liability, claims, damage, loss, or expenses.
- 12.6. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.
- 12.7. Subject to this clause 12, returns will only be accepted provided that:
- 12.7.1. the Customer has complied with the provisions of clause 8; and
  - 12.7.2. RAM has agreed that the Equipment is defective; and
  - 12.7.3. the Equipment is returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - 12.7.4. the Equipment returned in as close a condition to that in which it was delivered as is possible.
- 12.8. Notwithstanding clauses 12.1 to 15.7 but subject always to the ACL, RAM shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of any of the events referred to in clause 10.5 above.
- 12.9. Notwithstanding anything contained in this clause if RAM is required by a law to accept a return then RAM will only accept a return on the conditions imposed by that law.

## 13. USED EQUIPMENT, RISK AND RETENTION OF TITLE (APPLIES TO SALES AND PURCHASES ONLY)

- 13.1. RAM agrees to sell and the Customer agrees to buy the used Equipment in the quantities and at the prices set out in the Tax Invoice RAM provides to the Customer.
- 13.2. The description of the Equipment the Customer has been provided is based on the best information available to RAM. However, to the extent permitted by law, RAM makes no warranty, express or implied, as to the description of any of the Equipment, except as expressly set forth otherwise in this Agreement.
- 13.3. The Equipment will be available for inspection at the places and times specified by RAM except in the case of online auction. Except in the case of online auction, the Customer is invited, urged and cautioned to inspect the Equipment prior to purchase. The Equipment will be available for inspection at the places and times specified by RAM.
- 13.4. Payment for the purchase of Equipment must be made:
- 13.4.1. if the Customer has a current Credit Account, in accordance with the Payment terms; or

- 13.4.2. if the Customer does not hold a current Credit Account, on COD terms.
- 13.5. Unless otherwise agreed, the Customer is responsible for collecting the Equipment from RAM's premises. The costs of, and liability for, preparing, dismantling, loading and transporting the Equipment will be the Customer's expense.
- 13.6. The Customer must give RAM two (2) business days prior written notice before entering RAM's premises to load Equipment or to perform dismantling work. RAM may deny the Customer access to the premises if such notice has not been given.
- 13.7. The Customer must ensure that the Customer dismantles and transports the Equipment.
- 13.8. The Customer can only remove the purchased Equipment from RAM's Premises on presentation of:
- 13.8.1. the Tax Invoice; and
  - 13.8.2. proof of payment of the total amount owing as set out in the Tax Invoice (unless the Customer has a current Credit Account).
- 13.9. If the Customer fails to remove any Equipment within the time period notified by RAM, RAM has the option of removing and storing the Equipment at the Customer's sole expense and risk or deeming all deposits or partial payments as having been forfeited by the Customer, in which case RAM may resell (without notice) at public sale or otherwise dispose of such Equipment at the Customer's sole risk and expense. The Customer shall remain liable for fees, expense and damages arising from any default by the Customer.
- 13.10. The Equipment is at the Customer's risk immediately on Delivery. Whilst the risk in the Equipment passes on Delivery, legal and beneficial title remains with RAM until payment in full for all debts accrued or owed by the Customer to RAM is received by RAM. Payment will not be deemed to be made until any cheque (or other form of payment) has been honoured or cleared.
- 13.11. Until RAM has received payment for all amounts owing to it by the Customer, it reserves the following rights:
- 13.11.1. legal and beneficial ownership of the Equipment;
  - 13.11.2. the right to enter the Customer's premises (or the premises of any third party where the Equipment is located) using reasonable force to repossess the Equipment;
  - 13.11.3. the right to keep or resell any Equipment repossessed under Clause 13.12.2; and
  - 13.11.4. any other rights it may have at law or under the PPSA.
- 13.12. If the Customer needs to dismantle or perform some other work on the Equipment on RAM's premises, RAM may require the Customer to provide the following forms of insurance:
- 13.12.1. worker's compensation insurance which meets the requirements of the laws of the state in which the work is being done; and
  - 13.12.2. a General Liability Insurance policy for personal

## 14. CANCELLATION

- 14.1. The Customer acknowledges that for reasons beyond RAM's control (for example, and without limitation, Equipment not being available for hire to the Customer when anticipated, due to a failure by another customer to return the Equipment to RAM on time) RAM may have to cancel any Agreement or Delivery at any time before the On Hire Date by giving written notice to the Customer. On giving such notice RAM shall repay to the Customer any money paid by the Customer under the Agreement. RAM shall not be liable for any damage or loss (including without limitation, consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of any undamaged property), whatsoever arising from such cancellation.
- 14.2. In the event that the Customer cancels Delivery of Equipment, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by RAM as a direct result of the cancellation (including, but not limited to, any loss of profits) where RAM has had to reject other enquiries/requests for the same Equipment due to the Equipment having been reserved for the Customer.

## 15. PPSA

- 15.1. Where the Hire Period exceeds the Maximum Hire Period (ie. 21 months or longer) or there is an agreement for the sale and purchase of Equipment, this clause 15 shall apply.
- 15.2. The Customer agrees that RAM has a:
- 15.2.1. PMSI in the Equipment (and its proceeds) supplied presently and in the future by RAM to the Customer; and
  - 15.2.2. a Security Interest in relation to any other amounts owed by the Customer to RAM.
- 15.3. The Customer agrees, to the extent permitted by law:
- 15.3.1. to do all things necessary and execute all documents reasonably required which RAM requests for the purpose of:
    - 15.3.1.1. ensuring that a Security Interest is enforceable, perfected and otherwise effective;
    - 15.3.1.2. enabling RAM to apply for any registration, or give any notification, in connection with a Security Interest created so that the Security Interest has the priority required by RAM; and
  - 15.3.1.3. includes anything RAM reasonably asks the Customer to do in connection with the PPSA;

- 15.3.2. that RAM may register its Security Interest on the PPSR and where necessary amend its registration from time to time;
- 15.3.3. to not grant any other person a Security Interest in respect of the Equipment or their proceeds; and
- 15.3.4. the Customer irrevocably waives any rights it may have to:
- 15.3.4.1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 15.3.4.2. redeem the Equipment under section 142 of the PPSA;
- 15.3.4.3. reinstate this contract under section 143 of the PPSA; and
- 15.3.4.4. receive a Verification Statement.
- 15.4. Nothing in this Clause 15 prevents RAM from taking collection action or legal action against the Customer to recover any amounts outstanding from time to time.
- 15.5. Until RAM has received payment for all amounts owing to it by the Customer:
- 15.5.1. the Customer agrees to take the Equipment as bailee for RAM;
- 15.5.2. the Customer must insure the Equipment, against all usual risks, to full replacement value until ownership passes to the Customer noting, on such insurance policy, the interest of RAM and any insurance monies received by the Customer in respect of Equipment owned by RAM, will be received on trust for, and paid to, RAM;
- 15.5.3. the Customer must, where reasonably possible, store each delivery of Equipment separately, clearly identified as RAM's property and in a manner to enable the Equipment to be identified and cross-referenced to particular Tax Invoices;
- 15.5.4. the Customer may only sell, use or part with possession of Equipment in the ordinary course of its business on the following conditions:
- 15.5.4.1. that a sale by the Customer will be as fiduciary agent for RAM and the Customer must receive on trust for and account to RAM for that part of the proceeds of sale that equates to the amount owing by the Customer to RAM for those Equipment, however this agency will only extend to the obligation to account for proceeds, and the Customer will not be bound by any contract between the Customer and the Customer's customer; and
- 15.5.4.2. the Customer will hold that part of the proceeds of the Equipment on trust for RAM. Such part will be deemed to equal in dollar terms the amount owing by the Customer to RAM for those Equipment at the time of the receipt of the proceeds;
- 15.5.4.3. the Customer keeps RAM's proportion of the proceeds of sale separately such that they are clearly traceable and identifiable;
- 15.5.4.4. if the Customer has not received the proceeds of sale, the Customer will, at RAM's sole discretion, transfer to RAM the Customer's rights in respect of the sale price.
- 15.5.5. the Customer may fix the Equipment into the articles of any other person on condition that the resulting item is owned in common by the Supplier and that other person.

## 16. SECURITY, CHARGE AND INDEMNITY FOR COSTS FOR BREACH

- 16.1. In consideration of RAM agreeing to hire or supply the Equipment, the Customer hereby charges in RAM's favour, all of its respective present and future interests in personal property and in real property, to secure the performance by the Customer of its obligations under these Terms and Conditions of Trade (including, but not limited to, the payment of any money). The Customer agrees that, on demand by RAM the Customer will immediately execute such mortgage or other instrument of security (Security Instrument), as RAM may require, and in the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably appoints any credit manager or solicitor engaged by RAM to be the Customer's true and lawful attorney to execute and register such Security Instruments. The Customer will not object to the lodgement by RAM of a caveat noting the interest given by this clause, or any other Security instrument, on the title of the charged property.
- 16.1.1. Where the Customer has previously granted a charge, mortgage or other security to RAM, in any previous agreement, that charge, mortgage or security interest will continue, and shall be in addition to and separate from the charges and security interest created in this agreement, and shall secure all indebtedness and obligations of the Customer under this Agreement.
- 16.2. The Customer agrees to indemnify RAM, on a full indemnity basis, against any and all losses, costs, charges, expenses, disbursements, collection agent costs and legal costs which RAM has incurred, incurs in the future or becomes contingently liable for:
- 16.2.1. as a result of the Customer's breach of any of the terms of this Agreement or the Credit Application;
- 16.2.2. as a result of any cheque given by the Customer, or electronic banking transaction made by the Customer, being dishonoured for whatever reason;
- 16.2.3. in obtaining, or attempting to obtain, payment for any amount due by the Customer;

- 16.2.4. otherwise arising out of the business relationship between the Customer and RAM;
- 16.2.5. in connection with the enforcement or discharge of this clause or clause 15;
- 16.2.6. in connection with any steps taken to preserve, perfect or protect any rights created under this Agreement.
- 16.3. For the purpose of clause 16.2, the Customer acknowledges that collection agent costs may be calculated on a commission basis at a percentage rate of up to 20% of the overdue debt and be contingent upon payment of the Customer's overdue debt (or portion thereof), irrespective of the amount of work performed by the collection agent before payment is made. The Customer agrees that it will pay any such commission or fees as liquidated damages on demand when making payment of the overdue debt or part thereof.

## 17. TRUSTEE CAPACITY

- 17.1. If the Customer is the trustee of a trust (whether disclosed to RAM or not), the Customer warrants to RAM that:
- 17.1.1. the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- 17.1.2. the Customer has the right to be indemnified out of trust assets;
- 17.1.3. the Customer has the power under the trust deed to sign this agreement; and
- 17.1.4. the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising RAM.
- 17.2. The Customer must give RAM a copy of the trust deed upon request.

## 18. VARIATION

- 18.1. Where RAM wishes to vary or change these terms, it will give the Customer 14 days' written notice of these proposed variations, in order to give the Customer a reasonable time to consider the variations and advise if it will not agree to them. If the Customer does not advise in writing within the 14-day period that it does not agree to the variations, the Customer will be taken to accept the variations. If the Customer does not accept the variations, it acknowledges that RAM may refuse future orders from the Customer (without penalty or claim for compensation from the Customer).
- 18.2. Any proposed variation to the Terms and Conditions of Trade by the Customer must be requested in writing and RAM reserves the right to refuse any such request.

## 19. JURISDICTION

These terms and words shall be construed in accordance with the laws of the State of South Australia and, where applicable, the Commonwealth of Australia; and the Customer submits to the non-exclusive jurisdiction of the courts of South Australia.

## 20. TERMINATION

- 20.1. Either party may terminate any Hire Period immediately by giving notice to the other party, if:
- 20.1.1. that other party breaches any term of the Agreement and fails to remedy the breach within 7 days of written notification of the breach; or
- 20.1.2. that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- 20.2. RAM may terminate the Agreement immediately if the Customer or any third party has made a false statement in, or breached a fundamental provision of the Credit Application or Agreement.
- 20.3. These rights of termination are in addition to any other rights either party has under the Agreement and does not exclude any right or remedy under law or equity.

## 21. GENERAL

- 21.1. No delay, omission or failure by a party to exercise any right power or remedy available or to enforce any provision of the Agreement shall be treated as a waiver of that provision, nor shall it affect any party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2. RAM will not be responsible for any default, loss, damage, liability or expenses due to any Force Majeure Event.
- 21.3. RAM may assign, license or sub-contract all or any part of this Agreement without the Customer's consent.
- 21.4. The Customer warrants that it has the power to enter into the 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.
- 21.5. If an order is placed with RAM, or any agreement entered into with RAM, by any entity/ies acting as agent of a principal (whether disclosed or undisclosed) both the agent and principal shall be jointly and severally to RAM for amounts due to RAM under the agreements and the agent shall be jointly and severally bound with the principal to these terms as if the agent was also

a 'Customer'.

## 22. PRIVACY

- 22.1. RAM is committed to protecting your privacy. RAM's policy is to comply with appropriate Australian Privacy Principles for the handling of personal information as set out in the Privacy Act 1988 (Cth) (as amended from time to time).
- 22.2. RAM may need to collect personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy.
- 22.3. By ordering Equipment from RAM, the Customer consents to and authorises RAM to collect, use, store, disclose to or exchange personal information in accordance with RAM's Privacy Policy and Credit Reporting Policy.
- 22.4. RAM's Privacy Policy and Credit Reporting Policy set out:
  - 22.4.1. the information about the Customer that RAM collects and holds;
  - 22.4.2. why RAM collects and holds it and for what purposes it is used;
  - 22.4.3. how the Customer may access the personal information and seek any correction of the information;
  - 22.4.4. how the Customer may complain about a failure of RAM to comply with the Privacy Act 1988 (Cth) or Credit Reporting Privacy Code;
  - 22.4.5. how RAM will deal with the complaint; and
  - 22.4.6. information about credit reporting, including the credit reporting bodies RAM may disclose the Customer's credit information to.
- 22.5. As set out in the Credit Reporting Policy, RAM is likely to provide the information contained within the Credit Application to a credit reporting body (Equifax, Creditorwatch and/or illion). The information and matters that are notified to a credit reporting body are information that identifies the Customer (for example legal name, address, date of birth, driver's licence number and contact details), trade reference details and information, any future payment defaults in relation to debts with RAM, and serious credit infringements. The policies set out the Customer's rights to access the information and how to contact the credit reporting bodies not to use or disclose the information in certain circumstances.
- 22.6. The Customer has the right to access the personal information RAM holds about the Customer.
- 22.7. Copies of RAM's Privacy Policy and Credit Reporting Policy are available upon request or visit the footer on the RAM Equipment website.  
<https://www.ramequipment.com.au/>