

## TERMS OF HIRE

### BETWEEN

**SCOPE SAFETY SYSTEMS (VICTORIA) PTY LTD A.C.N. 135 953 034 AND SCOPE SAFETY SOLUTIONS PTY LTD A.C.N. 137 864 585 and their officers and any subsidiary or associated entity and as trustee of any trust ("SCOPE")**

**AND**

**THE CUSTOMER**

### DEFINITIONS

The following definitions will apply for the purposes of these Terms of Hire:

**"Account Customer"** means a customer who has a current credit account with SCOPE and the Customer's subsidiaries, holding companies and other related entities.

**"Australian Consumer Law"** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.

**"Commercial Customer"** means a Customer using Equipment in relation to commercial, public or industrial building works including multiple home, apartment or unit constructions.

**"Consequential Loss"** includes any:

- (a) consequential loss;
- (b) loss of anticipated or actual profits or revenue;
- (c) loss of production or use;
- (d) financial or holding costs;
- (e) loss or failure to realise any anticipated savings;
- (f) loss or denial of business or commercial opportunity;
- (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
- (h) loss or corruption of data;
- (i) downtime costs or wasted overheads; or
- (j) special, punitive, or exemplary damages.

**"Consumer Contract"** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

**"Contract"** means each and every contract from time to time made between SCOPE and the Customer in respect of which credit and/or Equipment and Services are supplied by SCOPE to the Customer at the Customer's request.

**"Customer"** means the Account or Non-Account Customer ordering, buying, or hiring the Equipment and/or Services, and includes both Domestic and Commercial Customers.

**"Domestic Customer"** means a Customer using Equipment in relation to an individual home or other one-off domestic building works.

**"Equipment"** means any scaffolding, work platforms, railings and associated goods and equipment which the Customer requests SCOPE to provide either on hire or by purchase.

**"Event of Default"** means any of the following events:

- (a) the Customer fails to pay for any Equipment and Services and/or the Customer breaches these Terms of Hire;
- (b) the Customer ceases or threatens to cease carrying on business; or
- (c) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer goes into liquidation, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration.

**"Non-account Customer"** means a person or entity that does not have a current credit account with SCOPE and their subsidiaries, holding companies and other related entities.

**"Officer"** means each director, secretary, credit manager and authorised representative of SCOPE.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

**"Price"** means the total price payable to SCOPE under the Contract and/or Quotation.

**"Products and services"** includes all products, goods, and services supplied by SCOPE to the Customer. Products as defined herein also include any Equipment as supplied and defined in these terms.

**"Quotation"** means a quote for Equipment and/or Services issued to the Customer by SCOPE.

**"Site"** means any place to which the Customer requests the supply of Equipment and Services by SCOPE.

**"Small Business Contract"** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

**"Services"** means the installation of the Equipment by affixing it to a designated structure at the Site nominated by the Customer and the dismantling and removal of the Equipment at the end of the hire.

**"Works"** refers to Services.

## OPERATIVE PART

### 1. Incorporation of these Terms of Hire:

- (a) SCOPE and the Customer agree that these Terms of Hire are and shall be incorporated into each and every Contract between them.
- (b) SCOPE may, upon the provision of notice, change, modify, add or remove portions of these Terms of Hire at any time.
- (c) The Customer acknowledges and agrees that their continued contracting with SCOPE following changes to these Terms of Hire is to be construed as deemed acceptance by the Customer of those changes.
- (d) Previous dealings between SCOPE and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) Unless otherwise agreed, no Terms and Conditions of the Customer apply to any agreement between the Customer and SCOPE.

**2. Quotations:** All Quotations provided by SCOPE will, subject to clauses 3, 4 and 12 of these Terms of Hire, remain current for the period stated in the Quotation. If no period is stated, a Quotation will, subject to clauses 3, 4 and 12 of these Terms of Hire, remain current for 30 days from the date of the Quotation.

**3. Escalation and price variation:** SCOPE may increase or decrease the Price of Equipment and Services during the term of the Contract where it incurs an increase or decrease in its costs of supplying the Equipment and Services. SCOPE reserves the right to charge additional administration fees as determined by SCOPE from time to time.

- (a) SCOPE may increase or decrease the Price of Equipment and Services during the term of the Contract where it incurs an increase or decrease in its costs of supplying the Equipment and Services.
- (b) Where SCOPE varies the price or rates payable for the Equipment and Services pursuant to clause 3(a), SCOPE will notify the Customer of the new price/rates. Thereafter the Customer may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to the Customer, otherwise the Customer agrees that the price/rates will apply to the contract.

**4. Extras:** Unless stated in the Quotation, the Price quoted does not include items such as installation of Equipment, delivery of oversized loads or provision of vehicle escorts, on-Site scheduling, on-Site accommodation, provision of traffic control or any other item(s) specified in the Quotation as excluded. All extras will be charged by SCOPE to the Customer.

**5. Acceptance of Quotations:** All Quotations are only capable of acceptance by the Customer in writing.

- (a) Quotations made by SCOPE will not be construed as an offer or an obligation to supply in accordance with Quotation. SCOPE reserves the right to accept or reject at its discretion any offer to purchase received by it upon the provision of written reasons to the Customer. Only written acceptance by SCOPE of the Customer's offer will complete a contract.

**6. Payment:** The Customer must pay for all Equipment and Services supplied by SCOPE as follows: -

- (a) **Account Customers:** within 30 days after the end of the month of supply or within any alternative period granted in writing by SCOPE; and
- (b) **Non-Account Customers:** on a cash basis prior to the commencement of supply.

**7. Interest:** SCOPE is entitled to charge the Customer interest on amounts not paid on or before the due date specified by SCOPE at a rate of 10 percent per annum.

**8. GST:** Each amount payable by the Customer in respect of a Taxable Supply by SCOPE is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the *A New Tax System (Goods and Services) Act 1999 (Cth)*.

**9. Allocation of payments:**

- (a) Payments by or on behalf of the Customer's will be applied by SCOPE as follows:
  - (i) The Customer must pay for its own legal, accounting and business costs and all costs incurred by SCOPE relating to any default by the Customer under this agreement. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any)
  - (ii) The Customer will pay SCOPE's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
  - (iii) Subject to clauses 9(a)(i) and 9(a)(ii), payments by, or on behalf of, the Customer will be applied by SCOPE as follows.
    - a. Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 9(a)(ii).
    - b. Secondly, in payment of any interest incurred.
    - c. Thirdly, in payment of the outstanding invoice(s).
- (b) In circumstances where SCOPE seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at the SCOPE's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which SCOPE seeks to enforce its purchase money security interest.
- (c) To the extent that payments have been allocated to invoices by SCOPE in its business records, SCOPE may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at SCOPE's absolute discretion, including in a manner inconsistent with 10(a)(iii).
- (d) Payments allocated (and/or reallocated) will be treated as though they were allocated (and/or reallocated) in the manner determined by SCOPE on the date of receipt of payment.

**10. Provision of information:**

- (a) The Customer acknowledges and agrees that it must provide SCOPE with all information reasonably necessary (including without limitation all necessary plans, specifications, engineering requirements, details, and/or special instructions) to

enable supply and/or performance by SCOPE of the Equipment and Services requested by the Customer before the commencement of supply and/or performance. The Customer acknowledges and agrees that: -

- (i) if the necessary information is not provided by the Customer, SCOPE may refuse or suspend supply of its Equipment and Services until the information is provided;
  - (ii) SCOPE is not liable for any loss, damage, cost or expense incurred by the Customer due to a suspension or cancellation of supply by SCOPE of its Equipment and Services as a result of the Customer's failure to supply necessary information; and
  - (iii) if errors occur as a result of documents supplied to SCOPE by the Customer or a third party, the Customer must pay for the costs of rectification.
- (b) The Customer indemnifies SCOPE against all claims, costs, liabilities and expenses incurred by SCOPE as a result of, or related to:-
- (i) any inaccuracy, omission or error in the documents supplied by the Customer or a third party; and
  - (ii) any documents supplied by the Customer or a third party for the purposes of, or in the course of the supply of, the Equipment or Services that breach a third party's intellectual property rights.

**11. Changes to Customer requirements:** The Customer acknowledges and agrees that where the Customer proposes any variations, substitutions, additions and deletions to specifications, engineering requirements or special instructions resulting in, without limitation, any changes to Equipment quantities, period of hire, or installation work required by SCOPE (collectively referred to in this clause as "variations") after a Quotation has been accepted by the Customer and/or an Order placed with SCOPE: -

- (a) The Customer must obtain SCOPE's written consent to the variations.
- (b) The provision of SCOPE's consent or otherwise is in SCOPE's complete discretion.
- (c) SCOPE reserves the right to charge the Customer for any changes made after an order is made including cancellation, amendments in full or part, including the recovery of any costs, special products, materials, toolage or labour to the date of cancellation or amendment. If the variations are accepted by SCOPE, the Customer must pay SCOPE for any increase(s) in the Price of Equipment and Services supplied and the date of delivery or completion of work by SCOPE will be extended to any date nominated by SCOPE.

**12. Hire Terms and Pricing for Equipment:** The Customer acknowledges and agrees that: -

- (a) SCOPE's estimate of quantities for the hire of Equipment shown in the Quotation are calculated as accurately as possible based on the information supplied by the Customer. If there is any discrepancy between the estimate and the actual quantities of Equipment required, the Customer must pay SCOPE any increase(s) in the Price of Equipment charged by SCOPE for the actual quantities used.
- (b) Where prices for the hire or sale of Equipment are quoted at individually negotiated rates, the price to be charged will be that applying at the time of the Equipment's first hire or in the case of purchases, at the rate operative at the time of delivery of the Equipment.
- (c) For lump sum hire contracts for Equipment, unless it is otherwise stated in writing, the price will be adjusted in accordance with the rise and fall formula laid down by the National Cost Adjustment Provisions 2 (NCAP2) for the State or Territory in which the hire contract is to be carried out.
- (d) The minimum period of hire will be:
  - (i) 7 days for Domestic Customers, except for hire of First Floor Edge protection (external frame installation) where the minimum period of hire will be 3 days; and
  - (ii) 14 days for Commercial Customers;

from the date of installation, or if installation is not to be undertaken by SCOPE from the date of delivery. Unless otherwise stated all hire rates will be based on the minimum period of hire and all additional hire periods will be charged to the Customer on an ongoing basis while the Customer has continuing hire of the Equipment.

- (e) If prices charged for Equipment hire are a special rate determined by reference to a minimum length of hire and SCOPE agrees to accept an early return of the Equipment, SCOPE will be entitled to charge the Customer the hire charges applying at the commencement of the hire for the entire duration of the minimum period.
- (f) If the Customer requests SCOPE transport the Equipment between SCOPE's premises and the installation site, SCOPE's charges and expenses for delivering and/or collecting the Equipment will be added to the hire charges payable by the Customer.
- (g) For Domestic Customers, Quotations and charges for the erection and dismantlement of Equipment will be on all "all up all down" basis unless otherwise stated.
- (h) If the Equipment is unavailable and/or cannot be used due to delays or any non-performance caused by the Customer, the hire charges will remain payable by the Customer.
- (i) The Customer must "off-hire" the Equipment when the hire is complete by contacting the office of SCOPE and obtaining an "off-hire" register number. The Customer will be invoiced for the entire period from the date of delivery or installation of the Equipment up to and including the "off-hire" date.

**13. Dry Hire of Equipment and Occupational Health and Safety:** The Customer acknowledges and agrees that it is solely responsible for the erection and use of the Equipment and that the Customer must: -

- (a) use the Equipment for the sole purpose for which the Equipment is supplied in accordance with any limitations on the use of the Equipment arising from any statute, subordinate instrument, or the requirement of any local regulatory authority;
- (b) where the Customer or any person other than SCOPE is installing, dismantling, or removing the Equipment, ensure that the Equipment is erected and dismantled by suitably qualified persons and in accordance with the manufacturer's specification and user guide for installation and use (if provided to the Customer by SCOPE). A suitably qualified person will be the holder of any certificate of competence or licence that may be required by any statute, subordinate instrument or local regulatory authority for the purpose of the erection or dismantling of the Equipment;

- (c) disclose all related safety information provided by or on behalf of SCOPE to all persons responsible for the installation, utilisation or dismantling of the Equipment;
- (d) attach and maintain all safety signs supplied with the Equipment in noticeable positions on the Equipment or in such positions as are necessary to bring the signs to the attention of any users of the Equipment.
- (e) comply with any relevant legislation concerning occupational health and safety requirements associated with installation or use of the Equipment.

**14. Provision of Services:**

- (a) If the Customer has engaged SCOPE to erect Equipment in conjunction with the hire of Equipment, the Customer acknowledges and agrees that: -
  - (i) The Customer must ensure that the site is cleared and ready for installation of the Equipment before SCOPE is to start installation, and that the foundations upon which the Equipment is to be erected are sufficiently firm and otherwise suitable to safely carry the structure and the load to be placed on it without subsidence. The Customer acknowledges and agrees that it will be liable to SCOPE and its contractors for any loss, costs or damage which they may suffer or incur by reason of the Customer's failure to carry out its obligations in this respect (including without limitation, damages, or costs of delay due to the site not being cleared and ready), and for the cost of the hire of the Equipment, and that these amounts will be charged to the Customer.
  - (ii) Any additional cost involved in deviations between drawings or data supplied by the Customer and actual on-Site requirements for installation of Equipment will be charged to the Customer.
  - (iii) Any additional costs incurred by SCOPE or its contractors due to delays caused by denial of access to the site, obstruction by other trades or curtailment of electric power or other matters beyond the reasonable control of SCOPE and its contractors will be charged to the Customer.
  - (iv) The Customer must not interfere with the Equipment once installed unless in a way approved by SCOPE in writing and the work is carried out by suitably qualified persons.
- (b) SCOPE will use all reasonable endeavours to perform the Services in a competent, proper and workmanlike manner, exercising a reasonable standard of skill and diligence.

**15. Site access:** The Customer acknowledges and agrees that provision of clear, adequate and unobstructed access to the Site for semi-trailers, delivery vehicles and body trucks is the sole responsibility of the Customer. The Customer acknowledges and agrees that all costs incurred by SCOPE or its contractors for, amongst other things and without limitation:

- (a) recovery of bogged vehicles;
- (b) local Council fines issued to SCOPE, it's Contractors or the Customer;
- (c) delays to SCOPE vehicles once on Site resulting in increased costs;

that are caused whether directly or indirectly by difficulties associated with access to the Site will be charged to the Customer.

**16. Risk, Insurance and Condition of Equipment:** Where Equipment is to be supplied on hire:

- (a) Risk in the Equipment will pass to the Customer on delivery. The Customer must take out and maintain adequate insurance of the Equipment against all usual risks which identifies SCOPE's interest as owner of the Equipment. All proceeds from such insurance must be paid to SCOPE.
- (b) The Customer must ensure that the Equipment is used at all times in a proper, professional and responsible manner. The Customer must ensure that the Equipment is maintained in good condition and kept clean. The Customer will be liable for the costs of any cleaning which SCOPE considers necessary before or after return of the Equipment to SCOPE.
- (c) SCOPE or its contractors may inspect the Equipment at least once every 30 days or more frequently if required by statute or regulations.
- (d) The Customer must notify SCOPE immediately of any damage to or loss of the Equipment, giving reasonably full particulars of the nature and cause of the damage or loss.
- (e) Subject to clause 16(f), the Customer will be responsible for any loss or damage to the Equipment however caused, while in the possession or under the control of the Customer, except where the loss or damage is wholly caused by SCOPE or it's employees, or as a result of an inherent fault in the Equipment, or due to fair wear and tear. If the Equipment is substantially or completely destroyed, rendered unusable, or stolen, then the Customer must pay to SCOPE the current retail price for the Equipment.
- (f) If the Customer has paid to SCOPE a waiver charge, the Customer will not be liable for the costs of repairing the Equipment due to accidental damage where that damage is covered under SCOPE's insurance and the Customer has paid to SCOPE the amount of any excess payable by SCOPE under that Insurance.

**17. Affixing of Signs and Marketing material:** SCOPE may affix to Equipment supplied by it any advertising or other notices, signs, and materials it considers appropriate. The Customer must not attempt to remove, interfere, obscure, or damage such signs and materials without SCOPE's prior written approval. The Customer must not place marketing or advertising material on the Equipment without SCOPE's prior written approval.

**18. Property:**

- (a) Property and title in all Equipment supplied on hire remains with SCOPE. Where Equipment is supplied by way of sale, title in the Equipment shall not pass until the Customer has paid all moneys owing to SCOPE in full (whether or not Equipment is delivered in instalments, some of which have been paid for by the Customer). Risk in the Equipment passes to the Customer at the time of delivery.
- (b) The Customer holds the Equipment as fiduciary bailee and agent for SCOPE and must keep the Equipment physically separate from all other goods of the Customer, and clearly identified as owned by SCOPE: -
  - (i) at all times where the Equipment is supplied on hire; and
  - (ii) until payment in full of all moneys owed by the Customer to SCOPE where the Equipment is supplied by way of sale.
- (c) If an Event of Default occurs, then without prejudice to SCOPE's other rights, SCOPE may, with prior notice to the Customer, enter any premises occupied by the Customer or any other place where the Equipment may be and recover possession of the Equipment (including without limitation removing and detaching the Equipment from any structure to which the

Equipment is affixed in any manner SCOPE considers appropriate), and SCOPE may in its complete discretion resell or rehire the Equipment on any terms and conditions it considers appropriate and for SCOPE's exclusive benefit.

- (d) The Customer will be responsible for SCOPE's reasonable costs and expenses in exercising its rights under clause 18(c). Where SCOPE exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against SCOPE, its employees, servants, or agents.
- (e) The Customer must not sell or otherwise dispose of any Equipment supplied on hire or, supplied by way of sale where property in the Equipment has not passed from SCOPE to the Customer, or things (including land or structure) to which the Equipment have been affixed without first obtaining the written consent of SCOPE. If in breach of this condition the Customer sells any of the Equipment, without prejudice to SCOPE's other rights, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (f) If the Customer uses the Equipment in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Equipment in trust for SCOPE. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to SCOPE and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Equipment will be discharged.
- (g) If the Equipment is resold, or goods and services using the Equipment are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for SCOPE. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to SCOPE at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without SCOPE's prior written consent.
- (h) The Customer's indebtedness to SCOPE, whether in full or in part, will not be discharged by the operation of clauses 18(e) to 18(g) hereof unless and until the funds held on trust are remitted to SCOPE.
- (i) For the avoidance of doubt, SCOPE's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

#### 19. Personal Property Securities Act:

"Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of SCOPE supplying Equipment and/or Services to the Customer at the request of the Customer, the Customer by signing these Terms of Hire:
  - (i) grants to SCOPE a "Purchase Money Security Interest" ("PMSI") in all Equipment supplied by way of sale by SCOPE to the Customer from time to time as security for payment of the purchase price of such Equipment;
  - (ii) grants to SCOPE a "Security Interest" ("SI") in all Equipment supplied by way of sale by SCOPE to the Customer from time to time and in all of the Customer's personal property as security for payment of any other amount owed by the Customer to SCOPE and as security for the performance by the Customer of the obligations set out in these Terms of Hire;
  - (iii) agrees that any Equipment supplied by SCOPE to the Customer by way of sale, or proceeds of sale of the Equipment supplied by SCOPE to the Customer by way of sale, coming into existence after the date of these Terms of Hire will come into existence subject to the PMSI and SI granted herein and these Terms of Hire without the need for any further action or agreement by any party;
  - (iv) acknowledges that the Customer has received valuable consideration from SCOPE and agrees that it is sufficient; and
  - (v) agrees that the PMSI and SI has attached to all Equipment supplied now or in the future by SCOPE to the Customer by way of sale and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) SCOPE reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Terms of Hire.
- (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by SCOPE at SCOPE's complete discretion, and may, where applicable, be charged to the customer's credit account with SCOPE.
- (d) The Customer must promptly, on request by SCOPE, execute all documents and do anything else reasonably required by SCOPE to ensure that the PMSI and SI created under these Terms of Hire constitutes a perfected security interest.
- (e) The Customer must not agree to allow any person to register a financing statement over any of the Equipment in which SCOPE has any PMSI and/or SI without the prior written consent of SCOPE and will immediately notify SCOPE if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Equipment.
- (f) The Customer must not allow any Equipment in which SCOPE has any PMSI and/or SI to become accessions or commingled with other goods unless SCOPE has first perfected any PMSI or SI that SCOPE has in relation to the Equipment.
- (g) If SCOPE perfects any PMSI and/or SI that SCOPE has in relation to the Equipment, the Customer must not do anything that results in SCOPE having less than the security or priority granted by the PPSA that SCOPE assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
- (h) The Customer irrevocably grants to SCOPE the right to enter upon the Customer's property or premises, upon the provision of written notice, and without being in any way liable to the Customer or to any third party, if SCOPE has cause to exercise any of SCOPE's rights under Chapter 4 of the PPSA, and the Customer will indemnify SCOPE for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that:
  - (i) nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Terms of Hire;
  - (ii) sections 92, 95(1)(a), 97, 118(1)(b)(i), 121(4), 130(1)(a), 132(4), and 135(1)(a) of the PPSA will not apply to the enforcement of any PMSI and SI created under these Terms of Hire and the Customer waives any rights given to the Customer by, and obligations imposed on SCOPE in relation to the Customer under, the said sections;

- (iii) the Customer waives its right to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Terms of Hire under section 157 of the PPSA; and
- (iv) the Security Agreement created by these Terms of Hire may be reinstated on the terms considered appropriate by SCOPE at its complete discretion.

**20. Delivery:** SCOPE will deliver Equipment to the Site notified by the Customer subject to the following conditions: -

- (a) SCOPE will endeavour to deliver Equipment to the Customer when the Customer requires them but will not be responsible for any delays in delivery of any nature. The Customer cannot reject Equipment due to late delivery.
- (b) SCOPE may in SCOPE's complete discretion deliver by instalments. Failure to deliver an instalment, or late delivery of an instalment, will not entitle the Customer to repudiate the contract and the Customer cannot reject further deliveries of the balance of the Equipment.
- (c) Equipment will be at the Customer's risk upon delivery. If the Site is unattended the delivery docket/manifest signed by the cartage contractor will be prima facie evidence of due delivery.
- (d) If the Customer fails to accept a delivery agreed to between SCOPE and the Customer, the Customer will pay all costs incurred, including the costs of returning the Equipment to SCOPE and any subsequent re-delivery of such Equipment to the Customer.
- (e) All delivery, freight, and other transport costs (including any insurance of the Equipment) are at the Customer's expense and will be charged to the Customer, unless SCOPE expressly agrees otherwise in writing. Any additional costs associated with particular delivery instructions are at the Customer's expense and will be charged to the Customer even if the cost(s) have been omitted from any Quotation.
- (f) SCOPE may at SCOPE's complete discretion deliver by instalments. Failure to deliver an instalment will not entitle the Customer to repudiate the contract and the Customer cannot reject Equipment due to late delivery.
- (g) If SCOPE delivers only part of the Equipment and/or Services, then it may invoice the Customer and the Customer must pay for, that part of the Equipment and/or Services delivered, unless otherwise agreed in writing between the parties.
- (h) The Customer accepts and acknowledges that estimated delivery or supply of Equipment provided by SCOPE is an estimate only and SCOPE will not be liable for any loss suffered by the Customer as a result of delay in the delivery of Equipment.

**21. Supply claims:** The Customer will inspect and check all Equipment received as soon as practicable upon unloading. Any claim by the Customer of a short supply of Equipment must be notified to SCOPE at a reasonable time following delivery. All claims must be forwarded to SCOPE at the address specified on the front of the Quotation. SCOPE will endeavour to rectify any shortages as soon as practicable after receiving notice.

**22. Rectification and Claims:** Requests by the Customer to SCOPE for approval to undertake rectification works in relation to Equipment or Services supplied to the Customer (including but not limited to faulty Equipment), must:

- (a) be made in writing and sent to SCOPE at the address specified on the Quotation;
- (b) where the request relates to Services be made within 28 days of the Services being supplied by SCOPE;
- (c) where the request relates to Equipment be made within 1 day of the Customer becoming aware of any fault;
- (d) clearly identify the SCOPE order number to which the proposed rectification works or faulty Equipment relates; and
- (e) where the request relates to rectification work, provide sufficient details of the rectification work proposed to be undertaken by the Customer and the contractor or other party the Customer proposes to engage to undertake the work;

SCOPE may in its complete discretion approve or refuse a written rectification request made by the Customer.

**23. Site Inspection:** If the Customer makes a complaint and requests a SCOPE representative to visit a Site to inspect Equipment and/or Services supplied, SCOPE will arrange for a representative to attend the Site. In the event that the subject of the complaint is in no way attributable to the Equipment and Services supplied by SCOPE, SCOPE is entitled to charge the Customer for expenses, travel time and time spent on Site by SCOPE's representative at an hourly rate.

**24. Indemnity**

- (a) If the Customer defaults in the performance or observance of its obligations under any contract of which these Terms of Hire form part, then:
  - (i) SCOPE will take steps to mitigate its loss and act reasonably in relation to any default by the Customer; and
  - (ii) SCOPE will give the Customer notice requesting payment for loss and damage occasioned in respect of those events and requesting that the Customer remedy any breach within a reasonable time; and
  - (iii) if that demand is not met then the Customer will indemnify SCOPE in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that SCOPE has suffered arising therefrom.
- (b) The Customer's liability to indemnify SCOPE will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by SCOPE or a breach of SCOPE'S obligations under contract has contributed to the claim, loss, damage, or cost which is the subject of the indemnity.
- (c) The Customer's liability to indemnify SCOPE is a continuing obligation separate and independent from the Customer's other obligations and survives the termination or performance of any contract of which these Terms of Hire form part.

**25. Limitation of liability**

- (a) No party is liable to the other party for any Consequential Loss, including under clause 25, however caused arising out of or in connection with any contract for supply of which these Terms form part.
- (b) While SCOPE will take reasonable endeavours to meet any estimated delivery date or estimated time for Products and Services, the Customer acknowledges and agree that SCOPE is not liable for any delay associated with meeting those estimated timeframes.
- (c) If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, SCOPE'S liability is limited to:

- (i) (in the case of a supply of Products):
  - a. SCOPE repairing or replacing the Products; or
  - b. SCOPE paying the Customer the cost of having the Products repaired or replaced.
- (ii) (in the case of a supply of Services):
  - a. SCOPE supplying the Services again; or
  - b. SCOPE paying the Customer the cost of having equivalent Services supplied.
- (iii) (in the case of hire of Equipment):
  - a. us repairing the Equipment or providing a suitable replacement; or
  - b. us paying you the cost of having the Equipment repaired or procuring a suitable replacement.

## 26. Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms of Hire form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms of Hire and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
  - (i) has committed an act of bankruptcy; or
  - (ii) has been made bankrupt;
- (g) comprises a corporation which:
  - (i) enters into voluntary administration;
  - (ii) is subject to a deed of company arrangement; or
  - (iii) is subject to the appointment of liquidators or provisional liquidators.

## 27. Suspension or Ceasing of Supply:

- (a) If an Event of Default occurs, SCOPE may, without prejudice to SCOPE's other rights, call up moneys owed to SCOPE by the Customer, retain all moneys paid on account, or cease further deliveries and/or take immediate possession of any Equipment for which payment remains outstanding.

**28. Service of Notices and Documents:** All notices or documents required to be given to SCOPE for the purposes of the PPSA must be given in accordance with the PPSA.

**29. Waiver:** A waiver of any provision of these Terms of Hire will only be effective if made by the affected party in writing.

**30. Assignment:** A party may only assign its rights under the contract for supply with the written consent of the other party.

**31. Severance:** Each clause, subclause and part of these Terms of Hire is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

**32. Application of Laws:** These Terms and Conditions are governed by the laws of the State of Queensland. The Customer submits to and consents to the central Courts of Brisbane having jurisdiction over these Terms of Hire.

**33. Miscellaneous:** The parties acknowledge that: -

- (a) Any description of Equipment in SCOPE's quote or elsewhere will be by way of identification only and the use of the description will not create a sale by description.
- (b) The Customer has not relied on any representations made by SCOPE, its employees and agents which have not been stated expressly in this contract or upon any descriptions or illustrations or specifications contained in any document including any catalogue or publicity material produced by SCOPE.
- (c) The Customer acknowledges and agrees that it must not enter into and has not entered into any agreement with a third party which would prevent the Customer from complying with these Terms of Hire.
- (d) If SCOPE receives or recovers money in respect of a debt of the Customer, SCOPE may use the money to pay off whichever debt or part of a debt SCOPE chooses and is not compelled to apply the money as directed by the Customer or any other person.
- (e) SCOPE may at any time set-off amounts owed by SCOPE to the Customer against amounts owed by the Customer to SCOPE.
- (f) All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by SCOPE and the Customer in writing.
- (g) Any amount due to SCOPE from time to time may be deducted from any monies which may be or may become payable to the Customer by SCOPE.

**34. Anti-dumping:** Notwithstanding any other provision of these terms of hire, SCOPE may terminate any supply agreement upon written notice to the Customer, without liability, if the prices or amounts payable by SCOPE to its suppliers or other persons in respect of the Equipment or any components or constituent parts thereof, are increased (including retrospectively) by the imposition of any dumping or countervailing or similar duties by Australian authorities. Such termination will not affect any written orders for Equipment and/or Services received and accepted by SCOPE prior to the date notice of termination was given, which orders must be met in accordance with these Terms of Hire.