

1. GENERAL

1.1 These Terms and Conditions together with the Hire Quotation constitute a legally binding contract between PIC and the Hirer (“**Contract**”) and set out the terms and conditions upon which PIC shall provide the Services to the Hirer.

2. DEFINITIONS AND INTERPRETATION

In the Terms:

2.1 **Action** means any claim, action, suit, proceeding or demand.

2.2 **Agreed Rate** means 12% per annum.

2.3 **Business Day** means a day other than a Saturday, a Sunday or a public holiday in Western Australia.

2.4 **Damage** means loss, theft, damage, destruction or defacement (fair wear and tear of the Equipment excepted).

2.5 **Dangerous Goods** means Goods which are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to their container, other goods or to any person or property.

2.6 **Delivery Address** means the delivery address stated in the Hire Quotation or, if no address is stated, PIC’s premises at which the Equipment is located.

2.7 **Equipment** means the items of equipment specified in the Hire Quotation.

2.8 **Force Majeure** means a circumstance beyond the reasonable control of a Party which results in the Party being unable to observe or perform on time an obligation under the Terms, and any accident, breakdown or defect in the Equipment.

2.9 **Goods** means the whole and any part of any chattels, articles and things handled, lifted or carried using the Equipment.

2.10 **Hire Fee** means the charges specified in the Hire Quotation payable by the Hirer for the provision of the Services.

2.11 **Hire Period** means the hire period stated in the Hire Quotation.

2.12 **Hire Quotation** means the hire quotation form completed by PIC and sent to the Hirer referred to in clause 1.1 above.

2.13 **Hirer** means the hirer referred to in the Hire Quotation and, wherever the context permits, includes its officers, employees, assigns, contractors, agents and/or any persons claiming through, under or in trust of the Hirer.

2.14 **Loss** means any loss, damage, expense, payment or liability, whether direct or

indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

2.15 **Operation Location** means the place of operation of the Equipment stated in the Hire Quotation.

2.16 **Party** means a party to the Contract.

2.17 **person** includes a corporation, trust or incorporated body or entity.

2.18 **PIC** means Pacific Industrial Company (WA) Pty Ltd (ACN 008 895 154) as trustee for Steelfab Unit Trust (ABN 35 813 081 087) trading as Pacific Industrial Company and, wherever the context permits, includes its officers, employees, assigns, contractors, agents and/or any persons claiming through, under or in trust of PIC.

2.19 **Return Address** means the return address stated in the Hire Quotation or, if no address is stated, PIC’s premises at which the Equipment was located prior to delivery.

2.20 **Services** means all services to be provided by PIC to the Hirer under the Contract, including the hire of the Equipment.

2.21 **Terms** means these terms and conditions and any additional terms and conditions stated in the Hire Quotation, including any variations agreed by the parties in writing under clause 15.7.

2.22 All Hire Fees are exclusive of GST, unless specified otherwise.

2.23 If there is any inconsistency between the Hire Quotation and the Terms, then the Hire Quotation will prevail to the extent of the inconsistency.

3. PROVISION OF SERVICES

3.1 PIC agrees to provide the Services to the Hirer on the Terms.

3.2 The Hire Quotation is given by PIC on the basis of acceptance by the Hirer within 30 days of the date of the Hire Quotation and is subject to the right of withdrawal or revision before acceptance. If any changes occur in or charges applicable to the Services the Hire Quotation shall be subject to revision accordingly.

3.3 The Contract comes into existence on the Hirer’s instruction to PIC to supply the Services or the Hirer continuing to use the Services, irrespective of whether the Hirer returns a signed copy of the Hire Quotation to PIC or expressly confirms its agreement of the contents of the Hire Quotation or of the Terms.

- 3.4 The quantity, description or specification of the Services shall only be those expressly set out in the Hire Quotation (if accepted by the Hirer) or the Hirer's purchase order (if accepted by PIC).
- 3.5 The use of the Hirer's own form or purchase order irrespective of whether communicated to PIC shall in no way derogate from any of the Terms or the provisions of the Hire Quotation. The Contract solely governs and constitutes the agreement between the Parties and supersedes any prior promises, representations, undertakings or statements by or on behalf of PIC.
- 3.6 PIC reserves the right to refuse any order based on the Hire Quotation within 7 days after the receipt of the Hirer's purchase order.
- 3.7 No order which has been accepted by PIC may be cancelled by the Hirer except with the agreement in writing of PIC and any agreed cancellation is deemed to be on terms that the Hirer must indemnify PIC against all Loss incurred by PIC as a result of the cancellation.
- 4. CHARGES AND PAYMENT**
- 4.1 The Hirer agrees to pay the Hire Fee at the rate/s specified in the Hire Quotation within 30 days of invoice, or at such other period as stated in the Hire Quotation, plus any additional fees or charges payable by the Hirer in accordance with the Terms.
- 4.2 The Hirer must pay the Hire Fee for whichever is the longer period of:
- (a) the Hire Period; or
 - (b) from the date of delivery of the Equipment to the Hirer at the Delivery Address until the date of return of the Equipment to PIC at the Return Address; or
 - (c) if the Equipment is repossessed by PIC, from the date of delivery of the Equipment to the Hirer until the date the Equipment is repossessed by PIC.
- 4.3 If the Equipment is repossessed by PIC, the Hirer must pay PIC all charges and expenses incurred by PIC in repossessing the Equipment. These charges shall be in addition to the Hire Fee and are payable within 30 days of invoice.
- 4.4 In the event that the Hirer terminates the Contract for any reason whatsoever prior to the expiration of the Hire Period, the Hirer must pay PIC the balance of any Hire Fee for the remainder of the Hire Period, unless otherwise agreed in writing, and any other associated costs incurred as a result of the termination. Payment must be made 30 days after written notice of termination is given by the Hirer.
- 4.5 In addition to the Hire Fee, the Hirer agrees to pay for:
- (a) any consumables or spare parts supplied by PIC and used in connection with the hire of the Equipment; and
 - (b) any other services provided by PIC to the Hirer at the Hirer's request, including attendance at site to instruct in the operation of the Equipment.
- 4.6 If any amount to be paid by the Hirer to PIC is overdue, the Hirer must pay interest on that amount at the Agreed Rate, calculated and compounded daily until the amount is paid in full. Interest is payable on demand. Any payments made by the Hirer shall first be applied to any outstanding interest.
- 4.7 If the Equipment becomes bogged whilst obeying instructions of the Hirer, all charges and expenses incurred by PIC in recovering the Equipment from the bog shall be in addition to the Hire Fee and payable by the Hirer within 30 days of invoice.
- 4.8 PIC shall not be liable to refund to the Hirer any Hire Fee paid in advance if the Hirer elects to terminate the Contract before the end of the Hire Period for any reason.
- 5. GENERAL TERMS**
- 5.1 The Hirer acknowledges that PIC retains title to the Equipment and in no circumstances with the Equipment be deemed to be a fixture. The Hirer's rights under the Contract are limited to possession during the Hire Period as a bailee only.
- 5.2 Risk in the Equipment passes to the Hirer on delivery.
- 5.3 The Hirer must not assign any of its rights and/or obligations under the Contract to any other person or entity without the prior written consent of PIC, must employ the Equipment solely in its own work and shall not permit the Equipment to be used by any other party for any other work.
- 5.4 The Hirer must not claim any lien over any Equipment, and must not offer or agree or purport to offer or agree, to sell, lend, pledge, mortgage, let or hire the Equipment or any part of it at any time, part with possession of the Equipment during the Hire Period.

6. DELIVERY AND RETURN

- 6.1 Delivery of the Equipment shall take place when the Hirer takes possession of the Equipment at the Delivery Address.
- 6.2 PIC shall load the Equipment at delivery and unload it at return.
- 6.3 The Hirer shall return the Equipment to PIC at the Return Address at the end of the Hire Period.
- 6.4 The Hirer shall make all arrangements necessary to take delivery of and return the Equipment. In the event that the Hirer is unable to take delivery or return the Equipment as arranged due to any act or omission of the Hirer, the Hirer must pay all charges and expenses of redelivery or return. These charges shall be in addition to the Hire Fee and are payable within 30 days of invoice.

7. HIRER WARRANTIES

7.1 The Hirer warrants and agrees that:

Authority

- (a) it is authorised to accept the Terms on behalf of its principal (if any);

Inspection

- (b) the Equipment shall be inspected by the Hirer within 2 Business Days of delivery and if the Hirer is dissatisfied that it is in good working order and condition or unfit for its intended purpose and use by the Hirer then the Hirer shall immediately notify PIC in writing. Any failure by the Hirer to give notice under this clause shall constitute a deemed acceptance by the Hirer that the Equipment is in good working order and condition or unfit for its intended purpose and use;

Care and Maintenance

- (c) it will ensure that the Equipment remains fuelled, lubricated, serviceable and clean throughout the Hire Period;
- (d) it will undertake all preventative maintenance, servicing and minor running repairs in accordance with the specifications of the manufacturer of the Equipment;
- (e) it will ensure that all fuels, lubricants, parts and other consumables used in relation to the Equipment are of suitable grade and quality and are correctly fitted;

- (f) it will keep the Equipment safe and in its possession and control from the time of delivery until the time of return;

Operation

- (g) it will ensure the place of operation of Equipment is suitable for operation;
- (h) it will at all times during the Hire Period (at its expense):
 - (i) comply with all applicable laws governing operation of the Equipment;
 - (ii) comply with all relevant safety and operating guidelines, instructions and notices (including manufacturer's guidelines);
 - (iii) ensure that the Equipment is operated safely and with due care and skill at all times by suitably competent and experienced operators;
 - (iv) ensure that the Equipment not used beyond capacity or in a manner likely to result in excessive wear;
 - (v) ensure that the Equipment remains safe and in its possession and control throughout Hire Period; and
 - (vi) immediately notify PIC of any damage to the Equipment, or any damage or injury caused by the Equipment to any person or property;
- (i) if the Equipment breaks down or becomes unsafe to use during the Hire Period, it will:
 - (i) immediately stop using the Equipment and notify PIC;
 - (ii) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - (iii) take all steps necessary to prevent any further damage to the Equipment, and

- (iv) not repair or attempt to repair the Equipment without PIC's written consent.
 - (j) it will ensure that the operator of the Equipment complies with (g) to (i) above;
 - (k) it will comply with all requirements and directions of PIC, and the requirements of any applicable law, government body or other authority, including relating to the handling, lifting or carriage of any Dangerous Goods, or the use, operation or storage of the Equipment;
 - (l) it will, at its own expense, obtain all necessary approvals, permits and consents of all relevant government, local and other authorities for any use operation or storage of the Equipment;
 - (m) it will, at its own expense, ensure that all safety and operating instructions and notices are observed and are not defaced or removed from any Equipment; and
 - (n) it will not modify, deface, change or add to the Equipment (including by erasing any identifying mark, plate or number on or in any Equipment), or carry out any work on the Equipment without the prior written consent of PIC.
 - (d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;
 - (e) enters into any negotiations for any arrangement or composition with its creditors;
 - (f) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for the Hirer to be wound up; or
 - (g) ceases or threatens to cease to carry on business,
- then PIC may:
- (h) terminate the Contract immediately, without providing prior notice to the Hirer; and
 - (i) cease providing the Services and retake possession of the Equipment. The Hirer hereby irrevocably authorises PIC to enter the premises on which the Equipment is located for the purpose of retaking possession of the Equipment pursuant to the Contract. Where the Equipment is located on the property of any third party, the Hirer must obtain pre-approval from the third party or parties for irrevocable access for PIC for any reason.

8. DANGEROUS GOODS

8.1 Dangerous Goods shall only be handled, lifted or carried using the Equipment by special prior agreement of PIC.

9. DEFAULT AND TERMINATION

9.1 In the event that the Hirer:

- (a) fails to make any payment which it is required to make pursuant to the Contract and fails to remedy that breach within 3 days after being requested by PIC to do so;
- (b) commits or allows to be committed any breach or non-observance of any of the other obligations on its part to be performed and/or observed under the Terms, and fails to remedy or take effective action to remedy that breach or non-observance, so far as reasonably practicable, within 7 days after being requested by PIC to do so;
- (c) is unable to pay its debts when they fall due;

9.2 The termination of the Contract does not affect or prejudice any rights of PIC which have accrued prior to the termination, whether under the Contract or any written or unwritten law. PIC's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law, under statute or in equity.

9.3 If the Hirer defaults in any of its obligations under the Contract, including its obligation to pay for the Services, then all amounts unpaid as at the date of that default shall immediately become due and payable.

9.4 The date upon which the Equipment is returned shall be treated as a full day's hire.

9.5 The Hirer shall be entitled to terminate the Contract if PIC notifies the Hirer that it is for any reason unable or unwilling to provide the Services, relying on an entitlement to do so under the Terms, and that shall not be a breach of the Contract or of any obligation of PIC under any written or unwritten law.

9.6 PIC may set off any monies owed to the Hirer against monies owed by the Hirer to

- PIC under the Contract or any other agreement.
- 10. REMOVAL AND RETURN**
- 10.1 The Hirer must not remove the Equipment from the Operation Location without the prior written consent of PIC.
- 10.2 The Hirer shall return Equipment to the return Address as soon as practicable following the expiry of the Hire Period.
- 11. REPOSSESSION**
- 11.1 PIC may retake possession of any Equipment if it is of the reasonable view that the Hirer is subjecting the Equipment to unreasonable wear and tear.
- 11.2 The Hirer hereby irrevocably authorises PIC to enter the premises on which the Equipment is located for the purpose of retaking possession of the Equipment pursuant to the Contract. Where the Equipment is located on the property of any third party, the Hirer must obtain pre-approval from the third party or parties for irrevocable access for PIC for any reason.
- 12. LIABILITY, INDEMNITY AND RELEASE**
- 12.1 The Hirer hires the Equipment at its own risk.
- 12.2 The Hirer is liable for, indemnifies and will indemnify and keep PIC indemnified against all Loss, and hereby releases and will release PIC from any Action arising out of or in connection with the supply of the Services, including but not limited to:
- (a) Damage to the Hirer or to Goods caused by act or omission of the Hirer;
 - (b) Damage to the Equipment which occurs from the time of delivery to the time of return of the Equipment;
 - (c) the re-taking of possession of any Equipment pursuant to clauses 9 or 11;
 - (d) the weight or nature of the Goods declared by the Hirer to PIC being incorrect; or
 - (e) injury to or death of any person, or Damage to any property of the Hirer or any other person arising out of the delivery (including unloading), storage, possession by the Hirer, use, operation, collection or return (including loading or unloading) of the Equipment, however arising.
- 12.3 PIC shall not be liable to the Hirer for any Loss arising out of:
- (a) any of the events referred to in sub-clauses 12.2(a) to (e) above;
 - (b) any delay in the delivery or return of the Equipment;
 - (c) any event of Force Majeure;
 - (d) any unavailability of the Equipment; or
 - (e) any Loss suffered by third parties, including the Hirer's contractors, servants, agents or clients.
- 12.4 To the maximum extent permitted by law:
- (a) all terms and warranties expressed or implied by any legislation, any written or unwritten law, trade, custom or usage or otherwise in relation to the provision of the Services or the Terms are expressly excluded;
 - (b) to the extent that any legislation or law implies any term or warranty or prohibits provisions in the Contract excluding or modifying the application of, exercise of or liability under that term or warranty, the liability of PIC for breach of that term or warranty is limited, at the discretion of PIC, to:
 - (i) in respect of the Equipment:
 - (A) the replacement of the defective Equipment or the supply of equivalent equipment, in which case PIC shall arrange such replacement or supply as soon as reasonably possible;
 - (B) the repair of the defective Equipment, in which case PIC shall arrange such repair as soon as reasonably possible; or
 - (C) the payment of the cost of having the defective Equipment repaired or replaced; or
 - (ii) in respect of any other Services:

- (A) the supply of the defective Services again; or
 - (B) the payment of the cost of having the defective Services supplied again.
- (c) To the extent that PIC is held to be liable to the Hirer for a monetary amount in respect of any Action or Loss arising out of or in connection with the Contract or the provision of the Services, PIC's liability to the Hirer shall in every case be limited to the amount of the Hire Fees paid by the Hirer to PIC under the Contract.
- (d) The Hirer shall not be entitled to make a claim or bring an Action for Loss arising out of or in connection with the provision of the Services unless:
- (i) the Hirer gives PIC notice of the occurrence of and nature of the events giving rise to the Loss within 7 days of the Hirer becoming aware of the events; and
 - (ii) any Action arising out of or in relation to the Loss is filed and served on PIC within 6 months after completion of the Services,
- failing which the Hirer shall be barred from bringing or making any such Action and PIC shall be fully released and discharged from such Loss.
- (e) For the avoidance of doubt, the Hirer's compliance with clause 12.4(d) is a condition precedent to the Hirer's entitlement to make any claim for, or bring any Action in respect of, any such Loss.
- (f) PIC shall not be liable to rectify any defect, damage, discrepancy or shortage in any Equipment unless the Hirer gives PIC notice of such defect, damage or discrepancy within 2 Business Days of taking possession of the relevant Equipment.
- 12.5 PIC shall not be liable for Loss arising out of or in connection with any quotation, representation or information, whether oral or in writing, made or given by or on behalf of PIC. PIC does not accept responsibility in relation to any decision made or action taken or liability incurred on the basis of any such quotation, statement, representation or information.
- 13. INSURANCE**
- 13.1 Responsibility for insurance rests with the Hirer.
- 13.2 The Hirer is required to effect and maintain throughout the term of the Hire Period at its own expense:
- (a) any insurance which is compulsory under statute in the State or Territory in which the Equipment is used by the Hirer; and
 - (b) insurance covering the Equipment for its replacement value under transit and all risks insurance policies.
- 13.3 Such insurance must:
- (a) insure PIC for its rights and interest;
 - (b) include a cross liability provision noting that PIC and the Hirer shall be considered to be separate entities and the insurance applies as if a separate policy had been issued to each party to the same effect;
 - (c) include a waiver of subrogation against PIC; and
 - (d) include a clause that provides that a breach of condition or term of insurance by one insured will not adversely affect the cover provided to another insured.
- 14. FORCE MAJEURE**
- 14.1 Subject to clause 14.2, if either Party is by reason of Force Majeure prevented from carrying out any of its obligations under the Contract, that obligation shall be suspended but only to the extent and so far as affected by, and during the continuance of such Force Majeure. In particular, the Hirer shall not be liable to pay the Hire Fee for the duration of the Force Majeure event. Neither Party shall be liable to the other for delay, inconvenience or Loss due to Force Majeure.
- 14.2 The Hirer shall be liable to pay the Hire Fee for the duration of the period of any inoperability of the Equipment caused by the Hirer.
- 15. MISCELLANEOUS**
- 15.1 **Waiver:** No waiver by either party of any breach of a provision of the Contract is a waiver of any subsequent breach of that

- provision or any other provision. A waiver is not effective unless it is in writing.
- 15.2 **No Agency:** The Contract does not create a relationship of employment, partnership or agency between PIC and the Hirer, or between the Hirer and the individual whose services are provided by PIC.
- 15.3 **Subcontracting:** PIC may subcontract its obligations under the Contract but, if it does so, it will remain liable to the Hirer in accordance with the Terms.
- 15.4 **Severability:** Each provision of the Terms applies individually and severally so that if any provision is or becomes illegal, unenforceable or invalid it is to be treated as severed from the Terms but the rest of the Terms shall not be affected.
- 15.5 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State of Western Australia and the parties submit exclusively to the jurisdiction of the courts in that State, and any courts of appeal therefrom.
- 15.6 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract which otherwise remains in full force and effect.
- 15.7 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed on behalf of each Party.
- 15.8 **Notices:** Notices under the Contract must be in writing and in English addressed to the addressee at the address of that Party stated in the Purchase Order or as subsequently notified by that Party. Notices may be delivered by hand, by mail, by email or by facsimile transmission. Notices will be deemed given:
- (a) in the case of hand delivery, on the date of delivery as evidenced by a written acknowledgement of receipt by an authorised employee, agent or representative of the addressee;
 - (b) in the case of posting, 2 Business Days after posting if posted within Australia or 5 Business Days after posting if posted from or to a place outside Australia; and
 - (c) in the case of email sent to mail@pacind.com.au;
 - (d) in the case of facsimile, at the time of transmission (as evidenced by a successful transmission report from the sender's machine in the case of a facsimile) if the transmission was made before 5.00pm (addressee's local time) on a Business Day or otherwise at the commencement of the first Business Day following transmission.
- 15.9 **No Set-off:** The Hirer may not withhold any payment due under the Contract (including without limitation payment of the Hire Fee) or set-off or deduct all or any part of a payment against any amount claimed by the Hirer from PIC, for any reason (including by way of counterclaim).
- 15.10 **Time:** Time is of the essence in the Contract in respect of any obligation of the Hirer.
- 16. GST**
- 16.1 In this clause 16 the expressions "adjustment note", "consideration", "GST", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 16.2 Unless otherwise stated, the Hire Fee and any other amount payable for any supply of goods and services under the Contract are specified exclusive of GST.
- 16.3 If GST is imposed on any supply made under the Contract, the Hirer must pay to PIC an amount equal to the GST payable on the taxable supply. Such amount must be paid in addition to and at the same time as payment for the taxable supply is required to be made under the Contract.
- 16.4 If a GST price is charged or varied under the Contract, PIC shall provide the Hirer with a valid tax invoice or adjustment note at or before the time of payment or variation.
- 16.5 If the amount of GST paid or payable by PIC on any supply made under the Contract differs from the amount of GST paid by the Hirer, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the Hirer will be adjusted accordingly by a further payment by the Hirer to PIC or PIC to the Hirer, as the case requires.
- 17. APPLICATION OF THE PPSA**
- 17.1 In this clause 17, **PPSA** means the *Personal Property Securities Act 2009*. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 17.2 This clause applies to the extent that PIC's interest in any Equipment, or the Contract, is a security interest.
- 17.3 The Hirer must not:
- (a) create any form of security interest over any Equipment in favour of any third party;

- (b) register, or permit to be registered, a financing statement or financing change statement in respect of a security interest contemplated or constituted by the Contract without PIC's prior written consent; or
 - (c) register, or permit to be registered, a financing statement or financing change statement in relation to any Equipment in favour of any third party without PIC's prior written consent.
- 17.4 The Hirer acknowledges and agrees that PIC may apply to register a security interest in the Equipment at any time before or after delivery of the Equipment. The Hirer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 17.5 PIC can apply amounts it receives from the Hirer towards amounts owing to it in such order as PIC chooses.
- 17.6 If the Hirer defaults in the performance of any obligation owed to PIC under the Contract or any other agreement for PIC to supply Equipment to the Purchaser, PIC may enforce its security interest in any Equipment by exercising all or any of its rights under the Contract or the PPSA. To the maximum extent permitted by law, PIC and the Hirer agree that the following provisions of the PPSA do not apply to the enforcement by PIC of its security interest in the Equipment: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 17.7 The Hirer and PIC agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA. The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of such information.
- 17.8 The Hirer must promptly do anything required by PIC to ensure that the Hirer's security interest is a perfected security interest and has priority over all other security interests in the Equipment.
- 17.9 Nothing in this clause is limited by any other provision of the Contract or any other agreement between the parties.