

1. Definitions

- 1.1 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Owner to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using the Owner's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **"Equipment"** means all Equipment (including any accessories) supplied on hire by the Owner to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Owner to the Client.
- 1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Client.
- 1.8 **"Owner"** means Australian Boom & Scissor Lift Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Australian Boom & Scissor Lift Pty Ltd.
- 1.9 **"Price"** means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between the Owner and the Client subject to clause 5 of this Contract.
- 1.10 **"Services"** means all Services provided by the Owner to the Client at the Client's request from time to time, and includes means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Owner in the course of it conducting, or providing to the Client, any Services.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Services and/or Equipment on hire.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that the supply of Services/Equipment on credit shall not take effect until the Client has completed a credit application with the Owner and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services/Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Owner reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information or assistance provided by the Owner in relation to the Equipment supplied is given in good faith to the Client, or the Client's agent and is based on the Owner's own knowledge and experience and shall be accepted without liability on the part of the Owner.
- 2.7 Any time specified by the Owner for the Services/Delivery of the Equipment is an estimate only and the Owner will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Services/Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Owner is unable to supply the Services/Equipment as agreed solely due to any action or inaction of the Client, then the Owner shall be entitled to charge a reasonable fee for re-providing the Services and/or Equipment at a later time and date.
- 2.8 The Client further acknowledges and accepts that "good working order" means, in respect to the Equipment, that:
- (a) the Equipment is in good condition and good appearance throughout; and
 - (b) the Equipment has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.
- 2.9 The Owner will:
- (a) provide the Equipment in good working order; and
 - (b) allow the Client exclusive use of the Equipment during the Hire Term.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Owner shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Owner in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Owner in respect of the Equipment hire and/or Services.

Australian Boom & Scissor Lift Pty Ltd - Terms & Conditions of Hire

- 3.2 In circumstances where the Client is required to place an order for the Services/Equipment, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Services/Equipment ("**Client Error**"). The Client must pay for all Services/Equipment it orders from the Owner notwithstanding that such Services/Equipment suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Services/Equipment. The Owner is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.
- 4. Change in Control**
- 4.1 The Client shall give the Owner not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Owner as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At the Owner's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by the Owner to the Client upon placement of an order for the Services/Equipment; or
 - (b) the Owner's quoted Price (subject to clause 5.2) which shall be binding upon the Owner provided that the Client shall accept in writing the Owner's quotation within sixty (60) days.
- 5.2 The Owner reserves the right to change the Price:
- (a) if a variation to the Equipment which are to be provided is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Owner in the cost of materials and labour, etc. which are beyond the Owner's control.
- 5.3 Variations will be charged for on the basis of the Owner's quotation, and will be detailed in writing, and shown as variations on the Owner's invoice. The Client shall be required to respond to any variation submitted by the Owner within ten (10) working days. Failure to do so will entitle the Owner to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 **Deposit**
- (a) A non-refundable deposit is required to secure a booking with the balance being payable before pick up and/or delivery of the Equipment. The deposit payment forms part of the total payment due for the Equipment and is separate from the bond payment; and
 - (b) The deposit may be used to offset any applicable Price payable by the Client under clause 11.3, and any outstanding balance thereof shall be due as per clause 5.6.
- 5.5 **Refundable Bond**
- (a) A refundable bond is payable for Equipment provided on hire and will be refunded if the Equipment are returned in good order and working condition. If the Equipment returned are unclean, missing items, stained, or damaged in any way, the bond will be retained by the Owner. The refund will be processed within twenty-eight (28) days of the expiry/return date of the Equipment, whichever occurs first.
- 5.6 Time for payment for the Services and/or Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Owner, which may be:
- (a) on Delivery of the Equipment; or
 - (b) before Delivery of the Equipment; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Owner.
- 5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and the Owner.
- 5.8 The Owner may in its discretion allocate any payment received from the Client towards any invoice that the Owner determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Owner may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Owner, payment will be deemed to be allocated in such manner as preserves the maximum value of the Owner's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Owner in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Owner investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Owner placing the Client's account into default and subject to default interest in accordance with clause 13.1.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Owner an amount equal to any GST the Owner must pay for any provision of Services and/or Equipment on hire by the Owner under this Contract, or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.11 Receipt by the Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6. Hire of Equipment

Australian Boom & Scissor Lift Pty Ltd - Terms & Conditions of Hire

- 6.1 The hire charges shall commence from the time the Equipment departs from the Owner's premises and will continue until the return of the Equipment to the Owner's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 6.2 Where the Client has agreed to a specific hire period or Minimum Hire Period with the Owner and the hire period expires or is terminated, the Client acknowledges and agrees to promptly pay the Owner for all lost hire Price that the Owner would otherwise have been entitled to under this Contract.
- 6.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire, except where the Equipment is returned after 11am for normal hire, or after 8am for off hire.
- 6.4 The cost of delivery will be payable by the Client in accordance with the quotation provided by the Owner to the Client, or as otherwise notified to the Client prior to the placement of an order for the Equipment.
- 6.5 The Client shall be responsible for free access by the Owner to the site on which the Equipment is located. If there are any delays due to free access not being available, then the Client shall be responsible and shall reimburse the Owner for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Owner due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Owner or returned to the Owner's premises.
- 6.6 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 6.7 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Owner confirms special prior arrangements in writing. In the event of Equipment breakdown, provided the Client notifies the Owner 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 Client.
- 6.8 The Equipment is and will at all times remain the absolute property of the Owner, however the Client accepts full responsibility for:
- (a) the safekeeping of the Equipment and indemnifies the Owner 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 Client; and
 - (b) shall keep the Owner 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 Client or any other persons.
- 6.9 The Client will insure, or self-insure, the Owner'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 affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 6.10 If the Client fails to return the Equipment to the Owner then the Owner or the Owner's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 6.11 The Client is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 7. Damage Waiver**
- 7.1 The damage waiver fee is in addition to the hire charges. The damage waiver is **NOT** insurance but is an agreement by the Owner to limit the Client's liability in certain circumstances for loss, theft, or damage to the Equipment to an amount called the damage waiver excess fee.
- 7.2 Unless the damage waiver box on the hire form is marked "not required" (N/R) and initialled by the Client then damage waiver charges shall apply. The damage waiver excess for each item of Equipment is the amount equal to two thousand dollars (\$2000) or (if the replacement cost of the Equipment is less than two thousand dollars (\$2000)) the replacement cost of the Equipment or fifteen percent (15%) of the cost of the repairs (if the Equipment is partially damaged and can be repaired) or fifteen percent (15%) of the full new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair), whichever is greater. The damage waiver shall not apply to damage to the Equipment in the following circumstances, and the Client shall be responsible for, and shall indemnify the Owner (without limitation) against any loss or damage in the case of all Equipment for:
- (a) damage to batteries; or
 - (b) damage to tyres and tubes; or
 - (c) damage to any accessories; or
 - (d) damage caused where the Equipment is used for a purpose for which it was not designed; or
 - (e) damage caused by the use or operation of Equipment in violation of any statute (Commonwealth or State) or any regulation or by-law thereunder, or any bylaws imposed by a local authority; or
 - (f) misappropriation causing damage or wrongful conversion by the Client or its employees, servants, sub-contractors or agents, or any other third party to whom the Equipment is entrusted by the Client; or
 - (g) damage caused by the use or operation of the Equipment in contravention of any terms of this hire Contract; or
 - (h) damage resulting from overloading, or exceeding the rated capacity of the Equipment, or the misuse, abuse or improper servicing of the Equipment; or
 - (i) damage to the Equipment occurring whilst the Equipment is located, used, unloaded, or transported on, over or near water (including, but not limited to, places such as wharfs, bridges, barges, and vessels of all kinds); or
 - (j) damage to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment; or
 - (k) damage caused by exposure to any corrosive or caustic substance, such as but not limited to cyanide, salt water and acid.
- 7.3 On acceptance by the Client of the damage waiver, the Client shall be covered by the Owner's Contractors Plant Policy subject always to the terms and conditions of that policy, a copy of which is available from the Owner. The Client acknowledges and agrees to comply with the conditions of the Owner's Contractors Plant Policy.
- 7.4 In the event that the Client opts not to pay the Owner's damage waiver then the Client must insure the Owner'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 affect adequate

Australian Boom & Scissor Lift Pty Ltd - Terms & Conditions of Hire

- Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 7.5 Where no damage waiver has been paid by the Client the Client accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 7.6 Where no damage waiver has been paid by the Client then the Client shall Immediately on request by the Owner pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Owner; and/or
 - (b) all costs of repairing any damage caused by the ordinary use of the Equipment; and/or
 - (c) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent; and/or
 - (d) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Equipment that has previously been supplied and that will be supplied in the future by the Owner to the Client; and
 - (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Owner for Services – that have previously been provided and that will be provided in the future by the Owner to the Client.
- 8.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Owner may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, the Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Services and/or Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Owner; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services and/or Equipment in favour of a third party without the prior written consent of the Owner.
- 8.4 The Owner and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Owner, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by the Owner under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 8.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 8 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 8 will apply generally for the purposes of the PPSA. The Client agrees that the Owner may register a security interest as a Purchase Money Security Interest ("PMSI") for the purposes of the PPSA in favour of the Owner over the Equipment supplied.
- 9. Security and Charge**
- 9.1 In consideration of the Owner agreeing to supply the Services/Equipment on hire, the Client grants the Owner a security interest by way of a floating charge (registerable by the Owner pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment on hire under this Contract and/or permit the Owner to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 9.2 The Client indemnifies the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under this clause.
- 9.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 10.2 and 11.1 as applicable, is deemed insufficient by the Owner to secure the repayment of monies owed by the Client to the Owner, the Client hereby grants the Owner a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 10.1 The Client must inspect the Equipment on Delivery and must within twenty-four (24) hours of Delivery notify the Owner in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the

Australian Boom & Scissor Lift Pty Ltd - Terms & Conditions of Hire

- Services and/or Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Owner to inspect/review Services and/or Equipment.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 10.3 The Owner acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Owner makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services and/or Equipment. The Owner's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, the Owner's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Owner is required to rectify, re-supply, or pay the cost of re-supplying any Services and/or Equipment under this clause or the CCA, but is unable to do so, then the Owner may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any Services and/or Equipment and consumables which have been provided to the Client which were not defective.
- 10.7 If the Client is not a consumer within the meaning of the CCA, the Owner's liability for any defect or damage in the Services and/or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Owner at the Owner's sole discretion;
 - (b) limited to any warranty to which the Owner is entitled, if the Owner did not manufacture the Equipment; or
 - (c) otherwise negated absolutely.
- 10.8 Notwithstanding clauses 10.1 to 10.7 but subject to the CCA, the Owner shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client failing to properly maintain or store any Equipment;
 - (b) the Client interfering with the Equipment in any way without the Owner's written approval to do so;
 - (c) the Client using the Equipment for any purpose other than that for which it was designed;
 - (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Client failing to follow any instructions or guidelines provided by the Owner; or
 - (f) fair wear and tear, any accident, or act of God.
- 11. Client's Responsibilities**
- 11.1 The Client shall:
- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (b) notify the Owner immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) maintain the Equipment as is required by the Owner (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Owner or posted on the Equipment;
 - (e) ensure that:
 - (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Owner upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
 - (f) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Owner relating to any such matters or occurrences;
 - (g) comply with all work health and safety laws relating to the Equipment and its operation;
 - (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Owner (or the Owner's designated employee);
 - (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
 - (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
 - (k) 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; and
 - (l) indemnify and hold harmless the Owner in respect of all claims arising out of the Client's use of the Equipment.
- 11.2 The Client shall not:
- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (b) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
 - (c) carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of the Owner;
 - (d) use or carry any illegal, prohibited or dangerous substance in or on the Equipment; or
 - (e) use the Equipment for sand blasting or to apply shot crete; or
 - (f) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 11.3 Immediately on request by the Owner the Client will pay:
- (a) all costs incurred in cleaning the Equipment; and/or

- (b) the cost of fuels and consumables provided by the Owner and used by the Client;
- (c) any:
 - (i) lost hire fees the Owner would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by the Owner in picking up and returning the Equipment to the Owner's premises if the Client does not return the Equipment to the Owner's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so; and/or
 - (iii) insurance excess payable in relation to a claim made by either the Client or the Owner in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Owner's.

12. Cancellation

- 12.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of Services/Equipment on hire to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 12.1.
- 12.2 If the Owner, due to reasons beyond the Owner's reasonable control, is unable to deliver any Services/Equipment to the Client, the Owner may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Services/Equipment at any time before the Services/Equipment are delivered by giving written notice to the Client. On giving such notice, the Owner shall repay to the Client any money paid by the Client for the Services/Equipment to be hired. The Owner shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.3 The Client may cancel Delivery of the Services/Equipment by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 12.3, the Client will not be liable for the payment of any costs of the Owner, except where a deposit is payable in accordance with clause 5.4.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes the Owner any money, the Client shall indemnify the Owner from and against all costs and disbursements:
 - (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;in regard to legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under these terms and conditions, internal administration fees, the Owner's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 13.3 Further to any other rights or remedies the Owner may have under this Contract, if the Client has made payment to the Owner, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Owner under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 13.4 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client has exceeded any applicable credit limit provided by the Owner;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Compliance with Laws

- 14.1 The Client and the Owner shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services/Equipment.

15. Privacy Policy

- 15.1 All emails, documents, images or other recorded information held or used by the Owner is Personal Information, as defined and referred to in clause 15.3, and therefore considered Confidential Information. The Owner acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Owner acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Owner that may result in serious harm to the Client, the Owner will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to the Owner in respect of Cookies where the Client utilises the Owner's website to make enquiries. The Owner agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Owner when the Owner sends an email to the Client, so the Owner may collect and review that information ("collectively Personal Information").

Australian Boom & Scissor Lift Pty Ltd - Terms & Conditions of Hire

If the Client consents to the Owner's use of Cookies on the Owner's website and later wishes to withdraw that consent, the Client may manage and control the Owner's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 15.3 The Client agrees for the Owner to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Owner.
- 15.4 The Client agrees that the Owner may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 15.5 The Client consents to the Owner being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 15.6 The Client agrees that personal credit information provided may be used and retained by the Owner for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 15.7 The Owner may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and/or
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 15.3 above;
 - (b) name of the credit provider and that the Owner is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Owner is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Owner has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Owner, the Client has committed a serious credit infringement; or
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.9 The Client shall have the right to request (by e-mail) from the Owner:
- (a) a copy of the Personal Information about the Client retained by the Owner and the right to request that the Owner correct any incorrect Personal Information; and
 - (b) that the Owner does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 15.10 The Owner will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 15.11 The Client can make a privacy complaint by contacting the Owner via e-mail. The Owner will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

16. Building and Construction Industry Security of Payments Act 1999

- 16.1 At the Owner's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 16.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

17. Service of Notices

- 17.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or
 - (e) if sent by email to the other party's last known email address.
- 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

18. Trusts

- 18.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Owner may have notice of the Trust, the Client covenants with the Owner as follows:

Australian Boom & Scissor Lift Pty Ltd - Terms & Conditions of Hire

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not during the term of the Contract without consent in writing of the Owner (the Owner will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

19. General

- 19.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 19.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Owner has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 19.4 The Owner may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 19.5 The Client cannot assign or licence without the written approval of the Owner.
- 19.6 The Owner may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Owner's sub-contractors without the authority of the Owner.
- 19.7 The Client agrees that the Owner may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Owner to provide Services/Equipment on hire to the Client.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Owner, once the parties agree that the Force Majeure event has ceased.
- 19.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 19.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 19.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.