

TERMS OF TRADE

A. TERMS OF HIRE

1. Rental

- 1.1. Nexus shall hire the Hire Equipment to the Customer for the duration of the Hire Period and at the Hiring Fee as specified in the Hire Tax Invoice.
- 1.2. Nexus may, at its absolute discretion:
 - (a) accept or decline to hire any Hire Equipment to the Customer; or
 - (b) stop supply or terminate the hire of the Hire Equipment in accordance with clause 17.
- 1.3. The Customer agrees to hire the Hire Equipment on the terms and conditions contained in this Agreement (noting that Part A (Terms of Hire) and Part C (General Terms) apply to the hire of Hire Equipment).

2. Hire Period

- 2.1. The Hire Period commences on the earlier of the following:
 - (a) when the Customer takes possession of the Hire Equipment; or
 - (b) when Nexus delivers the Hire Equipment to the Customer at the Delivery Address or when the Customer collects the Hire Equipment from Nexus' premises (as the context permits).
- 2.2. The Hire Period ends on the later of the following:
 - (a) when the Hire Equipment is back in Nexus' possession; or
 - (b) the pickup/collection date specified in the Hire Tax Invoice.
- 2.3. The Hire Period must be a minimum of 14 continuous days, unless Nexus agrees to a shorter Hire Period in writing.
- 2.4. If the Customer fails to return the Hire Equipment to Nexus, or otherwise fails to make the Hire Equipment available for collection by Nexus at the Delivery Address (or such other location as agreed to by the parties in writing), by the pickup/collection date specified in the Hire Tax Invoice, Nexus will charge, and the Customer shall pay, by way of liquidated damages, a fee equal to 150% of the daily Hiring Fee for each day (or part thereof) until the Hire Equipment is returned (**Late Hiring Fee**).

3. Hire Fees

- 3.1. The Customer shall pay the Hire Fees to Nexus in accordance with the Hire Tax Invoice. The Hire Fees shall be paid in the manner nominated by Nexus.
- 3.2. In addition to the Hire Fees, the Customer will pay:
 - (a) good and services tax (**GST**) and any other taxes and government charges, levies or fines in relation to the hire of the Hire Equipment;
 - (b) charges for payments made by credit card;
 - (c) charges for the Delivery and Collection of the Hire Equipment, including but not limited to, loading or unloading,

- installation, dismantling, sorting and stacking of the Hire Equipment;
- (d) costs incurred by Nexus, where:
 - (i) the Customer requests Delivery or Collection of the Hire Equipment outside Business Hours; or
 - (ii) adequate access at the Delivery Address is not provided such that Delivery or Collection cannot be effectively performed;
- (e) charges to clean and repair the Hire Equipment if not returned in clean, good and functional working order;
- (f) charges for Support Services requested by the Customer; and
- (g) Late Hire Fee (if applicable).

4. Delivery and Collection

- 4.1. Where the Customer, or a person on behalf of the Customer, takes Delivery of the Hire Equipment from Nexus' premises or Collection is effected by returning the Hire Equipment to Nexus' premises (as the context permits), the Customer will ensure:
 - (a) that any person who collects or takes delivery of the Hire Equipment on behalf of the Customer is authorised by the Customer to do so; and
 - (b) the safe loading, securing and transportation of all Hire Equipment in accordance with all laws, industry guidelines and Documentation. The Customer must, and must ensure that any person transporting the Hire Equipment will, observe any safety directions advised by Nexus or as set out in the Documentation for the loading and safe handling of the Hire Equipment.
- 4.2. Where the Customer requests Delivery and Collection of the Hire Equipment be made by Nexus, or on behalf of Nexus, Nexus shall use reasonable endeavours to effect Delivery or Collection at the Delivery Address and by the date and time agreed between the parties in writing.
- 4.3. The Customer must do all things necessary to facilitate the Collection of the Hire Equipment by Nexus from the Delivery Address or the Site. When the Customer requests Collection of the Hire Equipment, the Customer must provide at least 2 Business Days' notice in writing.
- 4.4. The Customer shall procure that its duly authorised representative shall be present at Delivery or the Collection of the Hire Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that Customer has examined the Hire Equipment and found it to be in good condition, complete in every way for purpose for which it is intended, and in quantities ordered by the Customer. If required, the duly authorised representative shall sign a receipt confirming acceptance.

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- 4.5. If no representative of the Customer is present at:
- (a) the Delivery of the Hire Equipment at the Delivery Address, Delivery will be deemed to have been effected once the Hire Equipment has been offloaded and stacked by Nexus at the Delivery Address. Delivery by Nexus will constitute conclusive evidence that the Hire Equipment:
 - (i) was in good condition, complete in every way for purpose for which it is intended and in quantities ordered by the Customer; and
 - (ii) delivered to the Customer at the Delivery Address.
 - (b) the Collection of the Hire Equipment, Collection will be deemed to have been effected once the Hire Equipment leaves the last Site at which the Hire Equipment were situated. Collection of the Hire Equipment from the Site by Nexus will constitute conclusive evidence that the Hire Equipment:
 - (i) as to the quantity, description, date, condition, state of repair, and time of return of the Hire Equipment; and
 - (ii) that Nexus collected the Hire Equipment from the Customer.
- 4.6. Delivery or Collection times are estimates only. If the delivery of Hire Equipment is delayed for any reason, Nexus will not be liable to the Customer for any costs, losses or damages caused to the Customer (or anyone else) by any delays in Delivery or Collection. Nexus will use reasonable endeavours to promptly notify the Customer of any delays in delivering or collecting the Hire Equipment.
- 4.7. Prior to or at the time of Collection, the Customer must ensure that the Hire Equipment is:
- (a) in the same clean condition and good working order as it was when it was delivered to the Customer (including stacked, cleaned and sorted);
 - (b) in a appropriate position or location for removal;
 - (c) free of any chemical, concrete, paint and hazardous or dangerous substances; and
 - (d) safe and secure until Nexus has completed its Collection.
- If the Customer fails to comply with this clause, Nexus may, at its absolute discretion, charge the Customer an additional amount in accordance with clause 3.2.
- 5. Risk, title and insurance**
- 5.1. The risk of the Hire Equipment, including from loss, theft, damage or destruction of the Hire Equipment, shall pass to the Customer on and from Delivery. The Hire Equipment shall remain at the sole risk of the Customer at all times during the Hire Period.
- 5.2. The Hire Equipment shall at all times remain property of Nexus, and the Customer shall have no right, title or interest in or to same (save the right to possession and use of the Hire Equipment during the Hire Period subject to this Agreement).
- 5.3. The Customer must not, without prior written consent of Nexus:
- (a) part with control of (including for the purposes of repair or maintenance), transfer, sub-let, assign, sell or offer for sale or lend or otherwise encumber the Hire Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it (wholly or partly); and
 - (b) attach the Hire Equipment to any land or building so as to cause Hire Equipment to become a permanent or immovable fixture on same;
 - (c) do or permit to be done any act or thing which will or may jeopardise right, title and/or interest of Nexus in the Hire Equipment.
- 5.4. During Hire Period, the Customer shall, at its own expense, maintain:
- (a) insurance of the Hire Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, flood or other natural disaster, theft or accident, and such other risks as Nexus may nominate;
 - (b) insurance for such amounts as a prudent owner or operator of the Hire Equipment would insure for, or such amount as Nexus may from time to time reasonably require, to cover any third party or public liability risks however arising in connection with the Hire Equipment; and
 - (c) insurance against such other risks relating to the Hire Equipment as may be required by law, together with such other insurance as Nexus may from time to time consider reasonably necessary and advise to the Customer.
- 5.5. The Customer shall name Nexus on the insurance policies as a loss payee in relation to any claim relating to the Hire Equipment.
- 5.6. The Customer shall give immediate written notice to Nexus in the event of any loss, accident, loss or damage to the Hire Equipment.
- 6. Customer's responsibilities**
- 6.1. The Customer shall at all times during the Hire Period:
- (a) ensure that the Hire Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent Personnel and in accordance with any Documentation. The information contained in the

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- Documentation are approximate only and Nexus provides no warranty, guarantee or representation that such information is accurate, complete, up-to-date or error free. The Customer undertakes to check the accuracy, completeness and currency of the information before use;
- (b) satisfy itself as to the suitability, condition and fitness for purpose of the Hire Equipment without relying upon the skills or judgment of Nexus. Nexus is entitled to assume that the Hire Equipment was received by the Customer in good working order and condition;
 - (c) take such steps (including compliance with all safety and usage instructions and Documentation provided by Nexus or affixed to the Hire Equipment) as may be necessary to ensure that the Hire Equipment is at all times safe and without risk to health and safety when it is being setup, installed, assembled, used, cleaned, maintained or disassembled;
 - (d) ensure that hazard identification, risk assessment and risk control measures are carried out on Site for the installation of Hire Equipment and that all Personnel or third parties are trained in the safe use of the Hire Equipment;
 - (e) maintain at its own expense the Hire Equipment in good and substantial repair in order to keep it in as good an operating condition as it was at the commencement of the Hire Period;
 - (f) make no alteration or repair to the Hire Equipment and shall not remove any existing components or parts from the Hire Equipment without the prior written consent of Nexus. Title and property in all substitutions, replacements, renewals made in or to the Hire Equipment shall vest in Nexus immediately upon installation;
 - (g) not remove the Hire Equipment from the Site or use the Hire Equipment at any other location (other than the Site), unless Nexus has agreed in writing;
 - (h) permit Nexus to inspect the Hire Equipment at reasonable times and to enter upon the Site or any premises at which the Hire Equipment may be located, and the Customer shall grant Nexus reasonable access to such facilities for the purpose of inspection;
 - (i) not use the Hire Equipment for any unlawful or dangerous purpose; and
 - (j) hold all licences, permits and approvals necessary to hire and use the Hire Equipment and that no restrictions of any kind prevents the Customer from entering into an agreement or arrangement for the hire of the Hire Equipment.
- 6.2. The Customer shall be responsible for any loss or damage, liability or cost caused by or to the Hire Equipment during the Hire Period, or caused by any act or omission of the Customer, its Personnel or by third parties during the Hire Period. The Customer shall remain responsible at all times for any act or omission of a third party. The Customer is liable to Nexus for and must indemnify Nexus for:
 - (a) the full cost of either repairing or replacing the Hire Equipment as determined by Nexus at its absolute discretion; and
 - (b) any other costs arising from or in connection with the loss, theft or damage to Hire Equipment; and
 - (c) any lost revenue to Nexus arising from or in connection with the loss, theft or damage to the Hire Equipment.
 - 6.3. Provided the Customer pays the costs associated with the repair or replacement of the Hire Equipment, Nexus may, at its absolute discretion, either repair the Hire Equipment or provide a suitable substitute Hire Equipment.
 - 6.4. In the event that the Hire Equipment is lost, damaged, stolen or becomes unsafe to use during the Hire Period:
 - (a) the Customer must immediately stop using, cleaning, assembling or disassembling the Hire Equipment and the Customer must promptly notify and provide full details to Nexus; and
 - (b) the Customer must take all steps necessary to prevent loss of or damage to any property belonging to the Customer, its Personnel or any third party, personal injury or death and prevent further damage to the Hire Equipment.
 - 6.5. The Customer must not remove, deface, erase or cover up any identifying marks, ownership marks, plates, numbers, notice, warnings or safety information, on the Hire Equipment.
- ### 7. Nexus' responsibilities
- 7.1. Nexus agree to hire the Equipment to the Customer on the terms and conditions of this Agreement and will:
 - (a) allow the Customer to use the Hire Equipment during the Hire Period;
 - (b) use reasonable endeavours to effect Delivery or Collection of the Hire Equipment by the date and time agreed between the parties in writing; and
 - (c) provide the Customer with Documentation.
 - 7.2. Nexus may provide the Customer with Support Services during Business Hours.

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8. PPSA

8.1. If Nexus determines, in its absolute discretion, that the PPSA applies to any transaction under this Agreement, the Customer agrees that:

- (a) it grants a first ranking security interest and purchase money security interest in the Hire Equipment and the proceeds arising in respect of any dealings in the Hire Equipment for the purpose of the PPSA, as security for all amounts owing now or in the future, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to Nexus (where applicable), and that it waives the right to receive any verification statement relating to the security interest created in this Agreement;
- (b) it will do things necessary (such as obtaining consents and signing documents) to enable Nexus to register and perfect its security interest in the Hire Equipment and its proceeds and, if requested by Nexus, will not take possession of the Hire Equipment unless Nexus has registered a financing statement designating a purchase money security interest over them;
- (c) not register a financing charge statement in the respect of security interest contemplated or constituted by this Agreement without Nexus' prior written consent, and will not create any security interest in the Hire Equipment, nor register or permit to be registered a financing statement or finance charge statement in relation to the Hire Equipment in favour of a third party without Nexus' prior written consent;
- (d) Nexus may appropriate (or re-appropriate despite any prior appropriation) moneys received in respect of the Customer in its absolute discretion towards any part of the amounts owing in this Agreement, including in order to maximise the extent to which it can have recourse to its security interest in the Hire Equipment held by the Customer;
- (e) to the extent permitted by the PPSA, sections 95, 96, 117, 118, 121(4), 125, 127, 129(2) and (3), 130, 132, 134(2), 135, 142 and 143 of the PPSA do not apply to the obligations owed between Nexus and the Customer in accordance with this Agreement and the Customer has no rights under them; and
- (f) to promptly notify Nexus of any changes in writing of the Customer's details set out in the Credit Application.

B. TERMS OF SALE

9. Supply

9.1. The Customer engages Nexus to provide the Goods and Nexus agrees to supply the Goods to the Customer in accordance with the terms and conditions of this Agreement (noting that Part B (Terms of Sale) and Part C (General Terms) apply to the supply of Goods).

10. Price

10.1. The Customer shall pay the price for any Goods in accordance with the Purchase Order Invoice. Payment shall be made in the manner nominated by Nexus.

10.2. In addition to the price paid for any Goods, the Customer agrees to pay:

- (a) GST and any other taxes and government charges, levies or fines in relation to the purchase of the Goods;
- (b) the cost of Delivery of the Goods, packaging costs, transport insurance and all other costs, charges or expenses in relation to delivery which are payable to the Customer;
- (c) charges for payments made by credit card; and
- (d) charges incurred in connection with the cancellation or variation of a Purchase Order Invoice.

10.3. If between the date of confirmation of order and the issue of a Purchase Order Invoice, there is an increase in the cost to Nexus of supplying the Goods which is beyond the control of Nexus, then Nexus may increase the amount of the Purchase Order Invoice in line with the increase in cost.

11. Suitability and use

11.1. It is the Customer's responsibility to satisfy itself as to the suitability, condition and fitness for purpose of the Goods without relying upon the skills or judgment of Nexus. Nexus makes no warranty that the Goods requested by the Customer meets the needs of the Customer's business, are suitable for the purpose for which they are used or defect or error free. The Customer purchases the Goods at its own risk.

11.2. Notwithstanding any other provision of the Agreement, the Customer may only reject defective Goods, if the Customer notifies (and provides sufficient details to) Nexus in writing of the defective Goods within 3 Business Days after the date of Delivery. In the event the Customer rejects defective Goods, Nexus at its expense, shall use all reasonable endeavours to collect and replace any Defective Goods. To the extent permitted by law, such substitution constitutes the Customers sole and exclusive remedy for defective Goods.

12. Delivery and risk

12.1. The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on and from Delivery. Delivery

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will be deemed to have been effected once the Goods have been offloaded and stacked at the Delivery Address (regardless whether the Customer is at the Delivery Address at the time of Delivery to accept receipt of the Goods). Notwithstanding that a date (which date shall be an estimate) is stipulated in any order for Delivery, the time for Delivery of the Goods shall not be regarded as being of the essence. If the delivery of Goods is delayed for any reason, Nexus will not be liable to the Customer for any costs, losses or damages caused by any delays in delivery.

13. Title

13.1. Title in, and to, the Goods shall not pass to the Customer until payment in full for the Goods is received by Nexus in cleared funds.

13.2. The Customer acknowledges that until title in, and to, the Goods passes to the Customer:

- (a) the Customer holds the Goods as bailee of Nexus.
- (b) the Customer shall store the Goods separately and in such a manner that the Goods are clearly identified as property of Nexus.

13.3. Nexus shall be entitled at any time until title in, and to, the Goods passes to Customer in full, to demand return of the Goods and it shall be entitled without notice to the Customer and without liability to the Customer to enter any premises occupied by the Customer in order to search for and remove the Goods.

13.4. The Customer acknowledges that if it sells the Goods before title in, and to, the Goods has passed to the Customer, it sells the Goods as a fiduciary agent of Nexus provided that such sales shall not give rise to any obligations on the part of Nexus. The Customer shall hold the proceeds of sale on trust for Nexus in a separate account.

13.5. The Customer acknowledges Nexus may register any security interest (in any manner Nexus consider appropriate) in relation to the Goods and the proceeds arising in respect of any dealings in the Goods on the same terms as clause 8 of this Agreement (but applicable to the Goods as the context permits).

14. Cancelled or varied orders

14.1. No application for cancellation or variation to a Purchase Order Invoice will be considered unless made by the Customer in writing to Nexus.

14.2. Nexus, in its sole discretion, may consider an application by the Customer to cancel or vary any Purchase Order Invoice. Nexus reserves the right to charge the Customer for any loss or expenditure incurred by Nexus in relation to any cancellation or alteration of a Purchase

Order Invoice (including, but not limited to, the cost of the materials used or purchased, transport costs and the cost of labour incurred).

C. GENERAL TERMS

15. Quotations and orders

15.1. Any price quotations prior to the parties entering into this Agreement are indicative only and are not binding on Nexus. A quotation shall remain valid for 30 days only from the date of issue of the quotation.

15.2. Nexus requires that any order for Goods or Hire Equipment must be in writing. An Agreement will be formed upon the written acceptance by Nexus issuing a Hire Tax Invoice or Purchase Order Invoice.

16. Payment

16.1. All amounts due under this Agreement are payable in full within 30 days from end of month, without any deductions and set-offs. All amounts due under this Agreement are in Australian dollars unless expressly stated otherwise.

16.2. If the Customer fails to pay any amount to Nexus under this Agreement by due the due date, without limiting any other remedies available to it at law, Nexus may, at its sole discretion, either:

- (a) charge interest on all outstanding invoices, charged at an interest rate of 1.25% per month (15% per annum). Interest will accrue daily and be payable upon demand; or
- (b) cancel any sales orders or suspend the delivery of any Goods or Hire Equipment until all outstanding invoices are paid in full (including any interest); or
- (c) set off any and all outstanding invoices against any amounts owing to the Customer by Nexus under this Agreement.

16.3. The Customer will pay Nexus all costs and expenses incurred in recovering any outstanding invoices, fees or charges (including interest), legal costs (on a solicitor/client basis) or expenses paid by Nexus to mercantile or collections agents.

16.4. Nexus reserve its rights to request at any time upfront payment, bank guarantee or some other form of security if Nexus considers the terms of payment of any Goods or Hire Equipment delivered to the Customer by Nexus have not been strictly adhered to by the Customer, or Nexus has reasonable concerns about the Customer's ability to pay for any Goods or Hire Equipment or otherwise perform its obligations herein.

17. Term and termination

17.1. This Agreement commences on the date of execution of the Credit Application by both parties, and continues unless terminated pursuant to its terms.

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- 17.2. Without prejudice to any of its other rights, powers or remedies, Nexus may suspend or cancel any sales order for the delivery of Hire Equipment or Goods and may terminate this Agreement, if:
- (a) the terms of payment for any Goods or Hire Equipment by Nexus have not been strictly adhered to by the Customer; or
 - (b) the Customer defaults under any of obligations under this Agreement.
 - (c) an Insolvency Event occurs in relation to the Customer.
- 17.3. Nexus may terminate this Agreement at any time upon 14 days' notice in writing to the Customer.
- 17.4. Upon termination pursuant to clauses 17.2 or 17.3, without prejudice to other rights or remedies, the Customer shall pay to Nexus on demand:
- (a) all outstanding invoices and other amounts due under this Agreement (including any interest); and
 - (b) any costs and expenses (including legal costs) incurred by Nexus in:
 - (i) recovering the Hire Equipment, the Goods or the Documentation;
 - (ii) cleaning or repairing the Goods or the Hire Equipment; and
 - (iii) collecting any sums due under or arising out of this Agreement.
- 17.5. Termination shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.
- 18. Exclusion of warranties and liability**
- 18.1. To the extent that the Customer acquires goods or services from Nexus as a consumer within the meaning of the Australian Consumer Law, the Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by Agreement.
- 18.2. Nothing in this clause 18 operates to exclude, restrict or modify the application of any condition, warranty or provision implied by law, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (a) contravene that statute; or
 - (b) cause any term of this Agreement to be void
- (Non-excludable Obligation).**
- 18.3. Except in relation to Non-excludable Obligations and to the maximum extent permitted by law:
- (a) all representations, conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute are expressly excluded under this Agreement;
- (b) Nexus will not be liable to the Customer or any third party for:
 - (i) indirect, consequential, incidental, special or exemplary damages, expenses, losses or liabilities; or
 - (ii) loss of profits, business interruption, loss of revenue, economic loss, loss of goodwill, loss of or damage to reputation, downtime costs, loss of use, failure to realise anticipated savings, loss under or in relation to any other contract, loss of opportunity or expectation loss or loss of production; or
 - (iii) loss of or damage to any property or any personal injury or death to the Customer or any third person, arising out of, relating to or connected to the provision, delivery, hire or use of the Hire Equipment, the Goods, the Documentation and this Agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring; and
 - (c) Notwithstanding anything else, Nexus' total aggregate liability arising out of, relating to or connected to the provision, hire or use of the Hire Equipment, the Goods, the Documentation and this Agreement (and whether arising under any statute, in tort (for negligence or otherwise), or on any other basis in law or equity), is limited to the amounts paid by the Customer under this Agreement in the 1 month immediately preceding the date on which the claim giving rise to such liability arose.
- 18.4. Except as expressly and specifically provided in this Agreement:
- (a) Nexus shall not be liable where the Hire Equipment or the Goods (as the context permits):
 - (i) have not been used strictly in accordance with the Documentation;
 - (ii) the suitability of any Hire Equipment or the Goods (as the context permits) for any particular purpose or use under specific conditions which were not made known or communicated to Nexus;
 - (iii) have been altered or modified by anyone other than Nexus;
 - (iv) have been subjected to unusual or non-recommended use, misuse, neglect, accident,

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- damage in transit, abuse or unusual or natural hazard;
- (v) have been installed improperly; or
- (vi) have been interoperated with third party materials, goods or services.
- (b) the Hire Equipment, the Goods and the Documentation are provided to the Customer on 'as is' basis.
- 18.5. The Customer agrees to defend, indemnify and hold Nexus and its Personnel harmless from and against any and all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Nexus or which Nexus may pay, sustain or incur as a direct or indirect result of or arising out of any:
- (a) loss of or damage to any property belonging to the Customer, its Personnel or any third party, or any personal injury or death arising out of or in connection with this Agreement; or
- (b) breach or non-performance by the Customer or its Personnel of any its obligations under this Agreement.
- 19. Confidential information and intellectual property**
- 19.1. The Customer shall not, during and after termination of this Agreement, without prior written consent of Nexus, use or disclose to any other person any information of Nexus which is identified as confidential or which is confidential by its nature (including the Documentation and the terms of this Agreement). The Customer shall on demand, and on termination of this Agreement, deliver to Nexus all materials relating to such confidential information in its or its Personnel's possession or control.
- 19.2. Nothing in this Agreement shall be construed as granting any right, title or interest in any of Nexus' patents, designs, trademarks, trade secrets, know-how or other intellectual property rights in relation to the Hire Equipment, the Goods, the Documentation or otherwise (**Intellectual Property Rights**).
- 19.3. Any and all Intellectual Property Rights, and anything else generated therefrom, shall be Nexus' sole and exclusive property. For the avoidance of doubt, the supply of Hire Equipment, Goods or the Documentation by Nexus shall not confer any right, title or interest upon the Customer to use any of Nexus' Intellectual Property Rights, unless otherwise expressly permitted in this Agreement.
- 19.4. The Customer acknowledges that the Hire Equipment, Goods and Documentation may include individual third party goods, services or materials (including intellectual property rights contained therein) (**Third Party Products**). Any rights the Customer may have to access Third Party Products shall be limited to:
- (a) the extent of Nexus' ability to pass on such rights to the Customer; or
- (b) the relevant third party licensor terms.
- 19.5. Nexus does not endorse, sponsor or approve any Third Party Products made available via the Hire Equipment, the Goods or the Documentation. It is the Customer's sole responsibility to determine that specific products or services, introduced or used by the Customer, meets the needs of its business and/or are suitable for the purposes for which they are used.
- 19.6. The Customer hereby grants Nexus permission to use and publish its name, logo and trade mark, together with reference(s) to fact that it is a customer of Nexus, in any medium whatsoever, including on its website or marketing collateral.
- 20. Notices**
- 20.1. All notices given by Nexus may be given by email to the address in the Credit Application. It is the Customer's obligation to keep that email address current and correct. The Customer agrees that the record of Nexus having sent a notice to it by email is, of itself, conclusive proof of receipt.
- 20.2. Notices given by the Customer must be delivered to Nexus in writing and addressed to: accounts@nexuscs.com.au.
- 21. General**
- 21.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 21.2. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.3. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 21.4. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 21.5. You shall not, without the prior written consent of Nexus, assign, transfer, charge, sub-contract or otherwise deal in any other

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manner with all or any of its rights or obligations under this Agreement. Nexus may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

- 21.6. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 21.7. The laws of the State of Victoria, Australia govern this agreement. You agree to submit to the exclusive jurisdiction of the Courts of Victoria.

22. Definitions

22.1. In this Agreement, unless the context otherwise requires:

Agreement means the agreement between Nexus and the Customer for the hire of the Hire Equipment or the purchase of Goods (as the context permits) which includes:

- (a) the Credit Application;
- (b) the Hire Tax Invoice or the Purchase Order Invoice (as applicable);
- (c) these Terms of Trade;
- (d) the Guarantee and Indemnity; and
- (e) all other documents referred to therein.

Business Days means each day excluding Saturdays, Sundays and Public Holidays in Victoria.

Business Hours means 8:00am to 4:00pm on Business Days.

Credit Application means the application for credit completed by the Customer.

Collection means the transfer of physical possession of the Goods or Hire Equipment to Nexus.

Customer means the person or entity listed in the Credit Application and includes anyone acting on the Customer's behalf or with the Customer's express or implied authority.

Delivery means the transfer of physical possession, control or custody of the Goods or Hire Equipment to the Customer.

Delivery Address means the address set out in the Hire Tax Invoice or sales order.

Documentation means the documents made available to the Customer by Nexus which sets out the description of the Hire Equipment or Goods (as applicable), operating instructions, manuals and warnings for the Hire Equipment or Goods (as applicable), including, but not limited to, drawings, dimensions, weights, capacities, specifications or performances statements.

Goods means all good delivered to the Customer by Nexus or to be delivered by Nexus to the Customer.

GST has the meaning in clause 3.2.

Guarantee and Indemnity means the guarantee and indemnity under which the Guarantor/s guarantee all monies owing under this Agreement.

Guarantor means the person/s or entity listed in the Guarantee and Indemnity.

Hire Equipment means the equipment hired to the Customer, including any associated or attached tools, accessories and parts.

Hire Fee means the payments made by or on behalf of Customer for hire of the Hire Equipment, charged at a daily rate.

Hire Period has the meaning in clause 2.

Hire Tax Invoice means the payment schedule which sets out the specific Hire Equipment and daily rates to be hired to the Customer pursuant to this Agreement.

Insolvency Event means any of the following:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator has appointed over the Customer or any property belonging to the Customer.
- (b) the Customer cease to be able to pay its debts as they become due;
- (c) the Customer enters into a scheme, arrangement, agreement or compromise with its creditors or calls a meeting of creditors.
- (d) the Customer becomes bankrupt or insolvent.
- (e) the Customer has a winding-up or bankruptcy petition presented against it.
- (f) the happening in relation to the Customer of an event, having a substantially similar effect to any of the circumstances detailed in any of paragraphs (a) to (e).

Intellectual Property Rights has the meaning in clause 19.2.

Late Hire Fee has the meaning in clause 2.4.

Nexus means Nexus Construction Systems Pty Ltd (ABN 76 005 928 987) and related bodies corporate.

Personnel means any director, officer, employee, agent, contractor, sub-contractor, consultant or volunteers of a party.

PPSA means the Personal Property Securities Act 2009 (Cth) and where applicable includes all regulations made pursuant to it.

Purchase Order Invoice means the specific Goods purchased by the Customer and the price for such Goods, pursuant to this Agreement.

related bodies corporate has the meaning in the Corporations Act 2001 (Cth).



TERMS OF TRADE

Site means the Delivery Address or such other location as set out in the Hire Tax Invoice.

Support Services means provision of general advice regarding the setup, installation, assemblage, use, clean, maintenance or uninstallation of the Hire Equipment or Goods (as the context permits).

Third Party Products has the meaning in clause 19.4.