

Proquip Rental & Sales Operations Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Proquip”** means Proquip Rental & Sales Operations Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Proquip Rental & Sales Operations Pty Ltd.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Proquip 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.
- 1.4 **“Goods”** means all Goods or Services supplied by Proquip to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Equipment”** means all Equipment including any accessories supplied on hire by Proquip to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Proquip to the Client.
- 1.6 **“Hire Period”** means the period between the Commencement Date and the Termination Date.
- 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 Proquip to the Client.
- 1.8 **“Hire Schedule”** means a document which Proquip may require the Client to sign (or accept in a way Proquip requires) including particulars of Client, Equipment and Hire Period and such other information as Proquip may decide to require.
- 1.9 **“Termination Date”** means the date and time when the Client must return the Equipment to the possession of Proquip.
- 1.10 **“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.
- 1.11 **“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 Proquip’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.
- 1.12 **“Price”** means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between Proquip and the Client in accordance with clause 7 below.
- 1.13 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods/Equipment.
- 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 that:
(a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with Proquip and it has been approved with a credit limit established for the account; and
(b) in the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Proquip reserves the right to refuse Delivery; and
(c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Proquip reserves the right to vary the Price with alternative Goods as per clause 7.2, subject to prior confirmation and agreement of both parties; and
(d) Proquip also reserves the right to halt all Services until such time as Proquip and the Client agree to such changes. Proquip shall not be liable to the Client for any loss or damage the Client suffers due to Proquip exercising its rights under this clause.
- 2.5 Proquip may amend the Price or any related charges payable by giving the Client at least seven (7) days’ notice in writing before the change occurs. In the event, notice is given advising that the Price will be increased, the Client may, at its cost, return the Equipment to Proquip, or request that it be collected by Proquip, before the increase in the Price commences.
- 2.6 The Client acknowledges and agrees that where the Hire Period exceeds a period of two calendar months then in the event of the Client purporting to terminate this agreement before the Termination Date the Client shall pay to Proquip liquidated damages calculated in either of the following manner to be decided at the sole discretion of Proquip:
(a) twenty (20%) percent of the whole of the Price paid or payable by the Client to Proquip from the commencement date to the date of the said purported termination it being agreed by the parties that having regard to the length of the period of hire such liquidated damages properly reflect the reasonable losses of Proquip in the event of early termination; or
(b) such sum being the whole of the Price.
- 2.7 In the event that the Client also hires an operator of the Equipment the hire charges of the operator in accordance with the Price specified in the Hire Schedule and the charge out rate as specified in the Hire Schedule per operator, and will be charged by the hour.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) 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 Proquip 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 Proquip 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 Proquip in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Proquip; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Proquip 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 Proquip as a result of the Client's failure to comply with this clause.

5. Finance

- 5.1 If this contract is conditional upon the Client obtaining capital funding from a financial institution then they shall provide Proquip with written confirmation of the loan approval within five (5) working days of the date of signing this contract.
- 5.2 In the event any such loan application is declined then the Client shall have the right to withdraw from this contract subject to the Client providing Proquip with written evidence within five (5) working days of the date of signing this contract that the loan was declined. Upon receipt of such evidence Proquip shall refund the Client any deposit paid less any expenses incurred by Proquip for any Services performed to date.

6. Trade-ins

- 6.1 In the event that Proquip accepts a trade-in as part payment of purchase, Goods or Machinery outright, then the Client acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.
- 6.2 All trade-in items will be subject to a full inspection prior to a trade-in value being established.

7. Price and Payment

- 7.1 At Proquip's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Proquip to the Client; or
 - (b) the Price as at the date of Delivery of the Goods/Equipment according to Proquip's current price list or Hire Schedule (for the purposes of Hire, this may be on a daily, weekly or four (4) weekly rate or any other basis as advised by Proquip); or
 - (c) Proquip's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 7.2 Proquip reserves the right to change the Price if a variation to Proquip's quotation is requested. Variations will be charged for on the basis of Proquip's quotation, and will be detailed in writing, and shown as variations on Proquip's invoice. The Client shall be required to respond to any variation submitted by Proquip within ten (10) working days. Failure to do so will entitle Proquip 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.
- 7.3 At Proquip's sole discretion a non-refundable deposit may be required.
- 7.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Proquip, which may be:
- (a) on Delivery of the Goods/Equipment;
 - (b) before Delivery of the Goods/Equipment;
 - (c) by way of instalments/progress payments in accordance with Proquip's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Proquip.
- 7.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Proquip.
- 7.6 Proquip may in its discretion allocate any payment received from the Client towards any invoice that Proquip determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Proquip may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Proquip, payment will be deemed to be allocated in such manner as preserves the maximum value of Proquip's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 7.7 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 Proquip nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Proquip an amount equal to any GST Proquip must pay for any supply by Proquip under this or any other agreement for the sale of the Goods/hire of the Equipment. 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.

8. Product Specifications

- 8.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Proquip's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled

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to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Proquip;

(b) while Proquip may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Proquip has given these in good faith, and are estimates based on industry prescribed estimates.

8.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

9. Delivery of Goods/Equipment

9.1 Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:

(a) the Client or the Client’s nominated carrier takes possession of the Goods/Equipment at Proquip’s address; or

(b) Proquip (or Proquip’s nominated carrier) delivers the Goods/Equipment to the Client’s nominated address even if the Client is not present at the address.

9.2 At Proquip’s sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.

9.3 The Client must take Delivery by receipt or collection of the Goods/Equipment whenever either is tendered for Delivery. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then Proquip shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

9.4 Proquip may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

10. Risk to Goods

10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Proquip is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Proquip is sufficient evidence of Proquip’s rights to receive the insurance proceeds without the need for any person dealing with Proquip to make further enquiries.

10.3 If the Client requests Proquip to leave Goods outside Proquip’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client’s sole risk.

11. Title to Goods

11.1 Proquip and the Client agree that ownership of the Goods shall not pass until:

(a) the Client has paid Proquip all amounts owing to Proquip; and

(b) the Client has met all of its other obligations to Proquip.

11.2 Receipt by Proquip 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.

11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:

(a) the Client is only a bailee of the Goods and must return the Goods to Proquip on request;

(b) the Client holds the benefit of the Client’s insurance of the Goods on trust for Proquip and must pay to Proquip the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Proquip and must pay or deliver the proceeds to Proquip on demand;

(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Proquip and must sell, dispose of or return the resulting product to Proquip as it so directs;

(e) the Client irrevocably authorises Proquip to enter any premises where Proquip believes the Goods are kept and recover possession of the Goods;

(f) Proquip may recover possession of any Goods in transit whether or not Delivery has occurred;

(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Proquip;

(h) Proquip may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 2009 (“PPSA”)

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 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 all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to Proquip for Services – that have previously been supplied and that will be supplied in the future by Proquip to the Client.

12.3 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 Proquip 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 12.3(a)(i) or 12.3(a)(ii);

(b) indemnify, and upon demand reimburse, Proquip 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 Goods/Equipment charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of Proquip;

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- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of Proquip;
 - (e) immediately advise Proquip of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 Proquip 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Proquip, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by Proquip under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 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 12 will apply generally for the purposes of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of Proquip agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies Proquip from and against all Proquip's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Proquip's rights under this clause.
- 13.3 The Client irrevocably appoints Proquip and each director of Proquip as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 14.1 The Client must inspect the Goods/Equipment on Delivery and must within seven (7) days of Delivery notify Proquip 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 Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Proquip to inspect the Goods/Equipment.
- 14.2 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**).
- 14.3 Proquip acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Proquip makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Proquip's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, Proquip's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If Proquip is required to replace the Goods under this clause or the CCA, but is unable to do so, Proquip may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, Proquip's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Proquip at Proquip's sole discretion;
 - (b) limited to any warranty to which Proquip is entitled, if Proquip did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
 - (b) Proquip has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Proquip 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 Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Proquip;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 Notwithstanding anything contained in this clause if Proquip is required by a law to accept a return then Proquip will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where Proquip has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Proquip. Under no circumstances may such designs, drawings and documents be used without the express written approval of Proquip.

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- 15.2 The Client warrants that all designs, specifications or instructions given to Proquip will not cause Proquip to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Proquip against any action taken by a third party against Proquip in respect of any such infringement.
- 15.3 The Client agrees that Proquip may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Proquip has created for the Client.

16. Default and Consequences of Default

- 16.1 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 a half percent (2.5%) per calendar month (and at Proquip's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes Proquip any money the Client shall indemnify Proquip from and against all costs and disbursements incurred by Proquip in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Proquip's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies Proquip may have under this Contract, if a Client has made payment to Proquip, 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 Proquip under this clause 16 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.
- 16.4 Without prejudice to Proquip's other remedies at law Proquip shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Proquip shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Proquip becomes overdue, or in Proquip's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Proquip;
 - (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.

17. Cancellation

- 17.1 Without prejudice to any other remedies Proquip may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Proquip may suspend or terminate the supply of Goods/Equipment to the Client. Proquip will not be liable to the Client for any loss or damage the Client suffers because Proquip has exercised its rights under this clause.
- 17.2 Proquip may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice Proquip shall repay to the Client any money paid by the Client for the Goods/Equipment. Proquip shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 Further to clause 17.2, Proquip may terminate this agreement during the Hire Period by giving the Client thirty (30) days' notice in writing.
- 17.4 In the event that the Client cancels Delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Proquip as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by Proquip is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. Proquip 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 III C 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"). Proquip acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Proquip that may result in serious harm to the Client, Proquip 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.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to Proquip in respect of Cookies where the Client utilises Proquip's website to make enquiries. Proquip 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 Proquip when Proquip sends an email to the Client, so Proquip may collect and review that information ("collectively Personal Information")
- If the Client consents to Proquip's use of Cookies on Proquip's website and later wishes to withdraw that consent, the Client may manage and control Proquip's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Client agrees for Proquip 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 Proquip.
- 18.4 The Client agrees that Proquip 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

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- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.5 The Client consents to Proquip being given a consumer credit report to collect overdue payment on commercial credit.
- 18.6 The Client agrees that personal credit information provided may be used and retained by Proquip for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/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 Goods/Equipment.
- 18.7 Proquip may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that Proquip 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 Proquip is a member of an approved QAIC 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 Proquip has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Proquip, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Client shall have the right to request (by e-mail) from Proquip:
- (a) a copy of the Personal Information about the Client retained by Proquip and the right to request that Proquip correct any incorrect Personal Information; and
 - (b) that Proquip does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.10 Proquip 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.
- 18.11 The Client can make a privacy complaint by contacting Proquip via e-mail. Proquip 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.

19. Unpaid Seller's Rights

- 19.1 Where the Client has left any item with Proquip for repair, modification, exchange or for Proquip to perform any other service in relation to the item and Proquip has not received or been tendered the whole of any monies owing to it by the Client, Proquip shall have, until all monies owing to Proquip are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of Proquip shall continue despite the commencement of proceedings, or judgment for any monies owing to Proquip having been obtained against the Client.

20. Service of Notices

- 20.1 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;
 - (e) if sent by email to the other party's last known email address.
- 20.2 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.

21. Trusts

- 21.1 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 ("Trust") then whether or not Proquip may have notice of the Trust, the Client covenants with Proquip as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust 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 or 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 without consent in writing of Proquip (Proquip 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;

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- (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 property.

22. Building and Construction Industry Security of Payment Act 2002

- 22.1 At Proquip's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

23. General

- 23.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which Proquip has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts.
- 23.3 Subject to clause 14, Proquip shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Proquip of these terms and conditions (alternatively Proquip's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 Proquip may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of Proquip.
- 23.6 Proquip may elect to subcontract out any part of the 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 Proquip's sub-contractors without the authority of Proquip.
- 23.7 The Client agrees that Proquip 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 Proquip to provide Goods/Equipment to the Client.
- 23.8 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.
- 23.9 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.

Additional Terms & Conditions Applicable to Hire Only

24. Hire Period

- 24.1 Where a timing device is mounted on the Equipment it may be used by Proquip to determine the time the Equipment was in use by the Client unless otherwise stated in the Hire Schedule. Where the meter is found not to be working either during or at the Termination Date then Proquip will estimate the hours used and the onus is on the Client to prove otherwise.
- 24.2 Hire charges shall commence from the time the Equipment is collected by the Client from Proquip's premises and will continue until the return of the Equipment to Proquip's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 24.3 Unless otherwise agreed by Proquip, the Minimum Hire Period shall be for a period of one (1) day and usage shall not exceed eight (8) hours within that period.
- 24.4 The maximum allowable daily use shall not exceed eight (8) hours within any twenty four (24) on-hire period. Excess use charges will be applied in accordance with clause 24.1.
- 24.5 If Proquip agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Proquip's premises and continue until the Client notifies Proquip that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 24.6 Equipment must be returned or made available for collection by 9am on the designated off-hire day or additional charges will apply.
- 24.7 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Proquip confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Proquip immediately, hiring 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.

25. Access and Inspection

- 25.1 Proquip and its representatives have the right to enter the location at any time upon giving prior reasonable notice to the Client to inspect, maintain, repair and/or repossess the Equipment.

26. Stand-Downs

- 26.1 A Stand-down may be requested for Breakdowns, Public Holidays and Inclement Weather. A Stand-down will not be approved for fixed rate hire, hired-in equipment or apply to mobile plant or any rent to own arrangement. A Stand-down number must be obtained at the time of request. Unless a Stand-down number can be quoted, a Stand-down cannot be given.

27. Risk to Equipment

- 27.1 Proquip retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.

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- 27.2 The Client accepts full responsibility for:
- (a) the safekeeping of the Equipment and indemnifies Proquip 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) any loss or damage occurring to the Equipment (other than damage arising as a consequence of a negligent act or omission by Proquip) for the Hire Period. The cost of any replacement or repairs resulting from loss or damage will be payable by the Client including the hire incurred while plant is repaired to a hireable state.
- 27.3 The Client will insure, or self-insure, Proquip's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. 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.
- 27.4 Without limiting the generality of clause 27.2, the Client will be liable for the full cost of repairs to or the replacement of the Equipment where the loss or damage has been caused by:
- (a) using the Equipment outside of Proquip's or the equipment manufacturers guidelines or using the Equipment for purposes other than what the Equipment is intended for;
 - (b) negligence, misuse, abuse, or overloading including overloading of motors or any other part of the plant or were Proquip has reason to believe damage has occurred due to negligence, misuse, abuse, or overloading etc;
 - (c) the Equipment not stored in a safe place;
 - (d) vandalism;
 - (e) the result of the Client's breach of a clause/s of this Contract or hire agreement;
 - (f) violation of any law or regulation;
 - (g) damage to tyres and tubes by punctures or cuts;
 - (h) lack of lubrication or a failure to properly service or maintain the Equipment;
 - (i) locating, using, loading, unloading transporting the Equipment on or over water, wharves, bridges or vessels of any kind;
 - (j) damage caused by insufficient height or width or weight clearance, including, but not limited to, collision with a bridge, carpark, awning, gutter, tree or any other structure or object due to insufficient clearance;
 - (k) exposure to any unsafe electrical currents, toxic materials, corrosive or caustic substance, such as cyanide, salt water, acid etc.;
 - (l) operator neglect, incompetence and or carelessness;
 - (m) roll over.
- 27.5 The Client accepts full responsibility for and shall keep Proquip 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.

28. Damage Waiver

- 28.1 The hire charge will include a charge for the damage waiver. Damage waiver is charged at twelve percent (12%) of the value of the total hire costs. Damage waiver is not insurance but is an agreement by Proquip 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. The damage waiver excess fee is explained in clause 28.6 Note the limitations set out in clause 27.4.
- 28.2 The damage waiver is non-refundable.
- 28.3 For the purpose of this clause the term "Equipment" does not include any tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes, and other similar accessories, ground engaging tools, tracks, tyres, windscreens, mirrors, glass, and Perspex.
- 28.4 The Client is not required to pay the damage waiver fee from the date the Client produces a certificate of currency for an appropriate policy of insurance that covers loss, theft, or damage to the Equipment during the hire period for an amount not less than the replacement value of the Equipment. For the avoidance of any doubt, the Client is liable to pay the damage waiver fee for that portion of the hire period where a certificate of currency required pursuant to the clause remains outstanding ("Uninsured Period") and the Client is not entitled to any credit and/or reimbursement of the damage waiver fee charged and/or paid that relates to the Uninsured Period. The Client is responsible for any excess and any other costs associated with the Client's insurance and the Client is responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under the Client's insurance, including any loss Proquip suffers as a result of not being able to hire the Equipment.
- 28.5 Where the Client has paid the damage waiver fee, Proquip will waive it's right to claim against the Client for loss, theft, or damage to the Equipment if:
- (a) for theft, the Client has promptly reported the incident to the police and provided Proquip with a written police report;
 - (b) the Client has co-operated with Proquip and provided them with the details of the incident, including any written or photographic evidence Proquip requires; and
 - (c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 27.4.
- 28.6 The damage waiver excess for each item of Equipment is the amount calculated as follows:
- (a) *replacement* – where the Equipment is lost, stolen, or damaged beyond repair:
 - (i) subject to clause 28.6(a)(ii), the damage waiver excess fee for each item of Equipment that is lost, stolen, or damaged beyond repair, will be the amount equal to the greater of:
 - A. two-thousand five hundred (\$2,500.00) Australian Dollars + GST or;
 - B. ten percent (10%) of the new replacement cost.
 - (ii) where the new replacement cost is less than two-thousand five hundred (\$2,500.00) Australian Dollars, the damage waiver excess fee will be an amount equal to the new replacement cost.
 - (b) *repair* – where the Equipment is partially damaged and can be repaired:
 - (i) subject to clause 28.6(b)(ii), the damage waiver excess fee for each item of Equipment that is partially damaged and can be repaired will be the amount equal to the greater of:

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A. two-thousand five hundred (\$2,500.00) Australian Dollars + GST or:

B. ten percent (10%) of the new replacement cost.

(ii) where the repair cost of the Equipment is less than two-thousand five hundred (\$2,500.00) Australian Dollars, the damage waiver excess will be an amount equal to the lesser of the repair cost and the new replacement cost.

28.7 Even if the Client has paid the damage waiver fee, Proquip will not waive its rights to claim against the Client for loss, theft or damage to the Equipment and the damage waiver will not apply if the loss, theft, or damage has arisen from anything referred to in clause 27.4.

29. Title to Equipment

29.1 The Equipment is and will at all times remain the absolute property of Proquip.

29.2 If the Client fails to return the Equipment to Proquip then Proquip or Proquip's agent may (as the invitee of the Client and at the Client's expense) 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.

29.3 The Client is not authorised to pledge Proquip's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

30. Client's Responsibilities

30.1 The Client shall in accordance clause 27.4:

- (a) pay the damage waiver charge in accordance with clause 28,
- (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (c) notify Proquip immediately of the full circumstances of any required maintenance/service, mechanical issue, breakdown, or accident (including but not limited to any leaks or abnormalities). Upon notification, the Equipment must cease to be used until Proquip states otherwise;
- (d) maintain the Equipment as is required by Proquip (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
- (e) 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 Proquip or posted on the Equipment;
- (f) accept that pre-arranged major servicing may be carried out by Proquip during normal working hours during the Hire Period;
- (g) replace all flat and/or damaged tyres or tracks;
- (h) ensure that:
 - (i) all persons operating or erecting the Equipment are eighteen (18) years or older, 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 Proquip 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.
- (i) be liable for any levies, taxes (ie GST), 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 Proquip relating to any such matters or occurrences.
- (j) comply with all work health and safety laws relating to the Equipment and its operation;
- (k) 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 Proquip;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) indemnify and hold harmless Proquip in respect of all claims arising out of the Client's use of the Equipment.

30.2 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) not exceed the recommended or legal load and capacity limits of the Equipment;
- (c) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (d) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

30.3 Immediately on request by Proquip the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Proquip;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment up to an amount equal to the new list price of the Equipment;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in Proquip's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- (d) the cost of fuels, consumables and/or trade materials provided by Proquip and used by the Client and for any replaceable parts (including but not limited to 'teeth' & cutting edges on buckets & chisels on rock breakers) which in Proquip's opinion has undergone rapid wear as a result of the Client's use; and
- (e) any:
 - (i) lost hire fees Proquip would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - (ii) costs incurred by Proquip in picking up and returning the Equipment to Proquip's premises if the Client does not return the Equipment to Proquip's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;

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(iii) insurance excess payable in relation to a claim made by either the Client or Proquip 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 Proquip's.

31. Wet Hire

31.1 In the event that the hire includes the hire of an operator to operate the Equipment, the Client acknowledges that:

- (a) the operator who shall at all times remain an employee of Proquip;
- (b) the operator will be under the Client's direction and control and will comply with all reasonable and lawful directions of the Client;
- (c) Proquip will not seek to direct or supervise any of the work being undertaken by the operator;
- (d) Proquip will not be liable for any acts or omissions of the operator provided that the operator is acting under the Client's direction and control; and
- (e) the Client must not allow any other person to operate the Equipment without Proquip's prior consent.

32. Hire to Own

32.1 Upon expiry of the Hire Period, provided the Client has made full payment of all monies payable and fulfilled their obligations under this Contract, the Client may enter into a separate Contract to acquire ownership of the Equipment by payment to Proquip of the specified amount, and in this case clauses (title to Equipment, delivery, risk, returns and warranty) shall be applicable.

32.2 No Stand-downs apply to hire to own Equipment.