

TERMS AND CONDITIONS OF SALE AND HIRE
Qube Logistics (Aust) Pty Ltd (ACN 123 003 930)



1. Definitions and Application

1.1. The following terms have the following meanings unless the context otherwise provides:

- (a) "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;
- (b) "Agreement" means any agreement for the provision of Goods or Hire Equipment to you by Qube;
- (c) "Charges" means the fees payable by you for the Hire Equipment specified in the Hire Schedule;
- (d) "Conditions" means these terms and conditions of sale and hire;
- (e) "consumer" is as defined in the ACL and in determining if you are a consumer, the determination is made if you are a consumer under the Agreement;
- (f) "Default" means a default under Clause 21.1;
- (g) "Goods" means any goods supplied by Qube to you from time to time;
- (h) "GST" means any tax including additional tax imposed on the supply of or payment for Goods or Hire Equipment which is imposed or assessed under GST Law;
- (i) "GST Law" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;
- (j) "Hire Equipment" means any equipment hired by you from Qube from time to time;
- (k) "Hire Schedule" means a document which Qube may require you to sign (or accept in a way Qube requires) which includes particulars of the Hire Equipment, the Charges and such other information as Qube may decide or require;
- (l) "Invoice" means an invoice for the supply of Goods and/or Hire Equipment;
- (m) "PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;
- (n) "Purchase Price" is the amount payable by you for the Goods;
- (o) "Qube" or "we" or "us" means Qube Logistics (Aust) Pty Ltd (ACN 123 003 930) and any of its Related Bodies Corporate;
- (p) "Related Bodies Corporate" has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth); and
- (q) "you" or "Customer" means the person, jointly and severally if more than one, purchasing any Goods and/or hiring any Hire Equipment from Qube.

1.2. Unless otherwise agreed by Qube in writing:

- (a) these Conditions; and
- (b) any other terms and conditions which are imposed by law that cannot be excluded,
apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the

Customer's terms and conditions of purchase or hire (if any).

- 1.3. These Conditions may include additional terms in Qube's quotation and Hire Schedule, which are not inconsistent with these Conditions.
- 1.4. Acceptance of an order for Goods and/or Hire Equipment by Qube constitutes acceptance of these Conditions by you.
- 1.5. An Agreement is accepted by Qube when Qube accepts, in writing or electronic means, an order from you or provides you with the Goods or Hire Equipment.
- 1.6. Qube has absolute discretion to refuse to accept any order.
- 1.7. You must provide Qube with your specific requirements, if any, in relation to the Goods or Hire Equipment when you place an order with Qube.

2. Price

- 2.1. To the extent permitted by law, the Purchase Prices quoted for the supply of Goods to businesses and Charges quoted to businesses for Hire Equipment do not include GST and any other taxes or duties imposed on or in relation to the Goods and Hire Equipment. You may be required to pay GST and taxes in addition to the quoted Purchase Price or quoted Charges.
- 2.2. For non-business Customers, the Purchase Prices quoted for the supply of Goods and Charges quoted for Hire Equipment will include GST and any other taxes or duties imposed on or in relation to the Goods and Hire Equipment.
- 2.3. If you request any variation to the Agreement, Qube may increase the Purchase Price or the Charges (as applicable) to account for the variation.
- 2.4. Where there is any change in the costs incurred by Qube in relation to Goods or Hire Equipment, Qube may vary its Purchase Price or the Charges (as applicable) to take account of any such change, by notifying you.

3. Payment for Goods

- 3.1. Subject to Clause 3.2, you agree to pay the full Purchase Price to Qube on or before the due date specified in the Invoice.
- 3.2. Qube reserves the right to require payment in full prior to or upon delivery or collection of the Goods.

4. Payment for Hire Equipment

- 4.1. You agree to pay Qube the Charges in advance for each unit of Hire Equipment. Charges are due and payable on the 5th business day of each Period. Qube may increase the Charges upon prior notice to you.
- 4.2. You must pay all Charges for each calendar month (each a Period) regardless of the number of days in such Period you hired the Hire Equipment.
- 4.3. You agree to the Charges being automatically debited to your nominated credit card or bank account on the 5th business day of each month until all Hire Equipment has been returned to Qube and you have fulfilled all your obligations under the Agreement.

5. Terms of Payment

- 5.1. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 5.2. You must pay the full Purchase Price and/or Charges (as applicable) to Qube, without deduction, set-off or counterclaim.
- 5.3. Payment terms may be revoked or amended at Qube's sole discretion immediately upon Qube giving you written notice.
- 5.4. The time for payment is of the essence.
- 5.5. If any amount due to Qube is not paid by the due date, then all money which would become payable by you to Qube at a later date on any account, becomes immediately due and payable without the requirement of any notice to you, and Qube may, without prejudice to any of its other accrued or contingent right:
 - (a) charge you interest on the amount not paid under that Invoice (Overdue Amount). Interest on any Overdue Amount is calculated on a daily basis, at the rate being 4% above the base commercial overdraft rate of the National Australia Bank applicable during the period that the amount is overdue, per annum on the Overdue Amount, from the due date of payment to the actual date that Qube receives the Overdue Amount;
 - (b) charge you for, and you must indemnify Qube from, all costs and expenses (including without limitation all legal costs and expenses) incurred by Qube resulting from the default or in taking action to enforce compliance with the Agreement, to recover any Goods and Hire Equipment (as applicable) and any Overdue Amount;
 - (c) cease or suspend supply of any further Goods and Hire Equipment to you; and
 - (d) by written notice to you, terminate any uncompleted contract with you.

6. Performance of Agreement

- 6.1. Any period or date for delivery of Goods or Hire Equipment stated by Qube is an estimate only and not a contractual commitment.
- 6.2. Qube will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or Hire Equipment but will not be liable for any loss or damage that you or any third party may suffer for failure to meet any estimated date.

7. Delivery

- 7.1. Subject to Clause 7.6, Qube will arrange for the delivery of the Goods or Hire Equipment (as applicable) to you.
- 7.2. You are responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods or Hire Equipment to you to the point of delivery.
- 7.3. Qube may make part delivery of Goods or Hire Equipment and Qube may Invoice you for the Goods or Hire Equipment.
- 7.4. You indemnify Qube against any loss or damage suffered by Qube, its sub-contractors or employees as a result of delivery, except where you are a consumer and Qube has not used due care and skill.
- 7.5. If the address given to Qube for delivery is unattended or if delivery cannot otherwise be effected by Qube at that address, Qube may at its option:

- (a) deposit the Goods or the Hire Equipment at that address which shall be conclusively deemed to be delivery under these Terms; or
 - (b) store the Goods or the Hire Equipment and re-deliver the Goods or the Hire Equipment to the Customer at the Customer's cost. You are deemed to have taken delivery of the Goods or the Hire Equipment. You are liable for storage charges payable monthly on demand and futile delivery charges.
- 7.6. If agreed that you will collect the Goods or Hire Equipment:
- (a) you must collect the Goods or Hire Equipment with 7 days of being advised they are ready; and
 - (b) if you do not collect the Goods or Hire Equipment within this time, you are deemed to have taken delivery of the Goods or Hire Equipment and are liable for storage charges payable monthly on demand.

8. Risk

- 8.1. Risk in the Goods and Hire Equipment, and all insurance responsibility for theft, damage or otherwise will pass to you immediately on the Goods or Hire Equipment (as applicable) being delivered to you or taken from Qube's premises.
- 8.2. The Goods are sold to you and the Hire Equipment is supplied to you on the basis that you have obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods or Hire Equipment (as applicable).
- 8.3. You assume all risk and liability for loss, damage or injury to persons or to your property, or third parties arising out of:
 - (a) the use, installation or possession of any of the Goods sold by Qube; and
 - (b) the use or possession of any of the Hire Equipment supplied by Qube,

unless recoverable from Qube on the failure of any statutory guarantee under the ACL.

9. Retention of title in Goods

- 9.1. Title in the Goods remains vested in Qube and does not pass to you until Qube receives full payment in cleared funds of the Purchase Price for the Goods, as well as all other amounts owing by you to Qube.
- 9.2. Until Qube receives payment in cleared funds of the full Purchase Price and all other amounts owing by you to Qube:
 - (a) title and property in all Goods remain vested in Qube and does not pass to you;
 - (b) you hold the Goods as fiduciary bailee and agent for Qube and Qube is entitled to all rights and remedies of a bailor;
 - (c) you must not change the Goods in any way;
 - (d) you must not change or obscure in any way any identification marking or packaging that Qube have placed on the Goods showing that they are exclusive property of Qube;
 - (e) you must keep the Goods separate from your goods; and
 - (f) in the event that the Goods are sold to a third party, you must keep all proceeds from the sale of the Goods on

- trust for Qube in a separate account with a bank to whom you have not given security (however failure to do so will not affect your obligation as trustee) and you must promptly pay the proceeds of such sale of the Goods to Qube;
- (g) in addition to its rights under the PPSA, Qube and its nominees may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Qube, and for this purpose you irrevocably licences Qube to enter such premises and also indemnify Qube from and against all costs, claims, demands or actions by any party arising from such action.
- 9.3. The payment of the proceeds from a sale of the Goods by you does not relieve you of your obligation to pay to Qube the full Purchase Price.
- 10. Retention of title in Hire Equipment**
- 10.1. The Hire Equipment is, and will remain, the sole property of Qube. You do not have any right, interest or claim in or over the Hire Equipment except as expressly set out in this Agreement.
- 10.2. You do not have any express or implied right or entitlement to, sell, re-hire, lease, sublease, encumber, grant any right or interest (of any nature) in or over the Hire Equipment.
- 10.3. You must not alter the Hire Equipment in any way or change or obscure the identification lettering and numbering on any Hire Equipment. If you fail to remove any markings you have added to the Hire Equipment upon return of the Hire Equipment, Qube may do so at your cost.
- 10.4. To the extent permitted by law, you indemnify Qube against all losses, costs, liabilities and expenses incurred by Qube as a result of:
- (a) loss of, or damage to, the Hire Equipment by any cause (including lawful confiscation);
- (b) anything done by or with the Hire Equipment; or
- (c) the occurrence of any event of default referred to in Clause 21.1.
- 10.5. You must pay to Qube on demand any amount payable under the indemnity provided in Clause 10.4.
- 11. Personal Property Securities Act**
- 11.1. Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 11.2. For the purposes of the PPSA, terms used in Clauses 11 - 14 (inclusive) that are defined in the PPSA have the same meaning as in the PPSA.
- 12. Purchase Money Security Interest in Goods**
- 12.1. These Conditions are a security agreement and Qube has a Purchase Money Security Interest in all present and future Goods that it supplies to you and the proceeds of the Goods.
- 12.2. The security interest is a continuing interest irrespective of whether there are monies or obligations owing by you at any particular time.
- 12.3. You must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by Qube on the Personal Property Securities Register.
- 12.4. You must immediately upon Qube's request:
- (a) do all things and execute all documents necessary to give effect to the security interest or security interests created under this Agreement; and
- (b) procure from any person considered by Qube to be relevant to its security position such agreements and waivers as Qube may at any time require.
- 12.5. The security interest arising under this Clause 12 attaches to the Goods when the Goods are collected or dispatched from Qube's premises and not at any later time.
- 13. Application of PPSA to Hire Equipment**
- 13.1. If Qube determines that any Agreement for the hire of the Hire Equipment is or contains a security interest for the purposes of the PPSA, you must, at your cost and immediately upon the Qube's request:
- (a) do all things required (including execution of documents) to ensure Qube has a continuously perfected security interest (as defined in the PPSA) created in the Hire Equipment pursuant to any Agreement. This includes, but is not limited to:
- (i) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the requirements of the PPSA;
- (ii) enabling Qube to apply for registration of or give any notification in relation to the security interest;
- (iii) enabling Qube to exercise rights in relation to the security interest; and
- (b) procure from any person considered by Qube to be relevant to its security position, such agreements and waivers as Qube may at any time require to ensure Qube attains the highest ranking security possible in respect of the security interest.
- (c) In circumstances where this Agreement constitutes a PPS Lease, you acknowledge that you are the grantor and Qube is the secured party holder of a Purchase Money Security Interest by virtue of this Agreement and the PPSA.
- (d) You must not, except with the express written consent of Qube, allow to be, or be liable to become, perfected or attached in favour of any person, a security interest in any of the Hire Equipment, and whether to a provider of new value or otherwise.
- 14. General PPSA provisions**
- 14.1. Where permitted by the PPSA, you waive any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 14.2. Qube and you agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Conditions.
- 14.3. To the extent permitted by the PPSA, you agree that:
- (a) the provisions of Chapter 4 of the PPSA which are for your benefit or which place obligations on Qube will apply only to the extent that they are mandatory or Qube agrees to their application in writing; and

- (b) where Qube has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 14.4. Qube may allocate amounts received from you in any manner Qube determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods or the Hire Equipment supplied by Qube.
- 14.5. For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Conditions and any information pertaining to the sale of Goods and hire of the Hire Equipment and details of the Goods and the Hire Equipment shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the Goods or hire of the Hire Equipment, except as otherwise required by law or that is already in the public domain.
- 14.6. You hereby consent and appoint Qube to be an interested person and your authorised representative for the purposes of section 275(9) of the PPSA.
- 15. Hire Term and Return of Hire Equipment**
- 15.1. In relation to Hire Equipment, this Agreement commences on the date you take possession of the Hire Equipment or sign a receipt acknowledging delivery and acceptance of the Hire Equipment in good condition and terminates on the date you return the Hire Equipment as specified in Clause 15.2 or on the date that Qube terminates the Agreement (**Hire Term**).
- 15.2. At the end of the Hire Term, you must return the Hire Equipment to Qube at the depot specified in the Hire Schedule or such other place that Qube identifies. The Hire Equipment will be deemed to be returned to Qube only if all Charges and repair and damages costs assessed by Qube are paid by you to Qube and Qube issues to you a written receipt for the return of the Hire Equipment.
- 15.3. You must:
- (a) return the Hire Equipment in clean condition and free of labels, signage and graffiti; and
- (b) pay Qube on demand for any costs necessary to clean, restore and prepare the Hire Equipment for hiring to other customers.
- 15.4. Within 10 business days of the return of the Hire Equipment to Qube, Qube will notify you in writing of the costs of any repair or cleaning costs for the returned Hire Equipment.
- 16. Specific Terms for Hire Equipment**
- 16.1. Except for normal wear and tear, you must pay to Qube on demand for all damage to, loss or destruction of the Hire Equipment that occurs during the Hire Term or while the Hire Equipment is in your control or possession.
- 16.2. You are solely responsible for any damage to, spoilage of or theft of any contents stored in or any Hire Equipment during the Hire Term, including without limitation damage caused by leaking of any Hire Equipment, failure or malfunction of any refrigeration unit that is part of or hired in connection with the Hire Equipment, condensation, humidity, transport, theft, fire, vandalism, vermin, heat, cold, dust, water or loss caused by forces of nature.
- 16.3. You must protect the Hire Equipment from damage, loss or destruction.
- 16.4. If during the Hire Term, the Hire Equipment is lost, stolen, destroyed, damaged (in Qube's reasonable opinion at its sole discretion), or is not repairable, you must:
- (a) immediately notify Qube in writing of such occurrence;
- (b) continue to pay Qube all Charges owed until the end of the Hire Term; and
- (c) pay Qube the replacement value for the Hire Equipment.
- 16.5. Payments for Charges will not be applied to charges for the replacement value.
- 16.6. The replacement value of the Hire Equipment is listed in the Hire Schedule.
- 17. Obligations in relation to Hire Equipment**
- 17.1. You must fully comply with the operation, maintenance and repair instructions or conditions displayed in or on the Hire Equipment provided to you and as specified to you in the Hire Schedule and any other document provided to you by Qube.
- 17.2. You must retain the Hire Equipment at your premises or such other premises as approved by Qube. The Hire Equipment must be retained under your personal control or the control of your employees.
- 17.3. You must not, without Qube's prior written consent:
- (a) make any replacement, alteration or addition of any nature on the Hire Equipment which may lead to a reduction in the value of the Hire Equipment or cause any warranty over the Hire Equipment to be invalidated;
- (b) use the Hire Equipment for any purpose which is unlawful or which might prejudice Qube's interest in the Hire Equipment or invalidate any insurance in relation to the Hire Equipment;
- (c) install the Hire Equipment in any manner that would cause it to become a fixture to land;
- (d) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, hire or otherwise deal with the Hire Equipment or part with or attempt to part with the personal possession of the Hire Equipment; or
- (e) create any encumbrance, charge or lien of any kind on the Hire Equipment or any part of the Hire Equipment or to remain on the Hire Equipment.
- 17.4. You must allow Qube or its nominee access to your premises or to any place where the Hire Equipment is kept at any reasonable time for any purpose relating to this Agreement, including testing or inspection.
- 17.5. You must comply with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Hire Equipment and all laws which apply to or relate to the Hire Equipment with

respect to use, registration, storage, maintenance, and/or licensing of the Hire Equipment.

18. Cancellation

- 18.1. If Qube is unable to deliver or provide the Goods or Hire Equipment, then it may cancel your order (even if it has been accepted) by written notice to you.
- 18.2. No purported cancellation or suspension of an order or any part of it by you is binding on Qube once the order has been accepted.

19. Shortages and Exchanges of Goods

- 19.1. Subject to Clause 19.2 and 19.4, Qube will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless you notify Qube with full details and description within 10 days of delivery, otherwise you are deemed to have accepted the Goods.
- 19.2. When any shortages, claim for damaged Goods or non-compliance with the Agreement specifications is accepted by Qube, Qube may, at its option, replace the Goods, or refund the price of the Goods.
- 19.3. Subject to Clause 19.4, Qube will not under any circumstances accept Goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) are discontinued Goods or no longer stocked by Qube;
 - (c) have been altered in any way;
 - (d) have been used; or
 - (e) are not in their original condition and packaging.
- 19.4. If you are a consumer, nothing in this Clause 19 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

20. Force Majeure

- 20.1. Qube is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Qube may suspend or terminate the Agreement by written notice to you.

21. Default

- 21.1. You commit a Default under the Agreement if:
- (a) you fail to pay any amount payable by you to Qube under the Agreement by the due date and you do not remedy your failure within 5 business days of the date that Qube notifies you of the failure; or
 - (b) you fail to perform any obligation under the Agreement (other than under Clause 21.1(a)) and you do not remedy your failure within 5 business days of the date that Qube notifies you of your failure; or
 - (c) you cease doing business, become insolvent, commit an act of bankruptcy or become the subject of any proceeding under any bankruptcy Act, or its counterpart under the law of any territory outside of the jurisdiction of Australia.
- 21.2. In the event of a Default, without limiting its rights or remedies in any way, Qube may (but are not obliged to) immediately without notice to you and without releasing

you from any accrued obligations do one or more of the following:

- (a) terminate any or all Agreements;
 - (b) declare the balance of the Purchase Price and/or Charges due and payable by you;
 - (c) retake possession of the Goods and/or Hire Equipment; and
 - (d) remedy any default that you commit under the Agreement (at your cost).
- 21.3. Despite any provision in these Conditions to the contrary, in the event that Qube terminates any Agreement, you will no longer be entitled to possession of the Goods or Hire Equipment without Qube's written consent and you must immediately return the Goods and Hire Equipment to Qube (at your cost) in accordance with these Conditions. After Qube terminates an Agreement, nothing in these Conditions gives you any express or implied right or entitlement to, and you must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over any Goods or Hire Equipment.
- 21.4. If this Agreement is terminated due to a Default, in addition to Qube's rights under the PPSA, you at your cost irrevocably authorise Qube and its nominees to enter upon any property where it suspects the Goods and Hire Equipment are, and to use such reasonable force as may be necessary, for the purpose of removal of any Goods and/or Hire Equipment, notwithstanding that they may have been attached to other goods not the property of Qube. For this purpose, you irrevocably licence Qube to enter such premises and also indemnify Qube from and against all costs, claims, demands or actions by any party arising from such action. You acknowledge that Qube is not liable for the care or safekeeping of any property removed from any Goods and/or Hire Equipment.

22. Acknowledgement and Exclusion of Liability and Indemnity

- 22.1. Except as these Conditions specifically state, or as contained in any express warranty provided in relation to the Goods or the Hire Equipment, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Hire Equipment, or any contractual remedy for their failure.
- 22.2. If you are a consumer nothing in these Conditions restricts, limits or modifies your rights or remedies against Qube for failure of a statutory guarantee under the ACL.
- 22.3. If you on-supply the Goods to a consumer and:
- (a) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Qube's liability to you;
 - (b) the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Qube's liability to you;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by you or any third party.

- 22.4. If Clause 22.2 or 22.3 do not apply, then other than as stated in these Conditions or any written warranty statement, Qube is not liable to you in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Hire Equipment by you or any third party.
- 22.5. You indemnify Qube for any loss, damage, cost or expense incurred by QUBE, to the maximum extent permitted by law, for any breach of these Conditions by you.
- 22.6. Qube is not liable for any indirect or consequential losses or expenses suffered by you or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 22.7. You acknowledge, to the extent applicable, that:
- (a) you have inspected the Hire Equipment prior to taking possession or delivery to you;
 - (b) you accept the Hire Equipment in its current state;
 - (c) you have not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Qube in relation to:
 - (i) the Goods or their use or application; and
 - (ii) the condition, suitability and specifications of the Hire Equipment; and
 - (d) you have not made known, either expressly or by implication, to Qube any purpose for which you require the Goods or the Hire Equipment and you have the sole responsibility of satisfying yourself that the Goods and Hire Equipment are suitable for your purposes;
 - (e) Qube has not given any warranty or made any representations to you as to the Goods or the Hire Equipment or their use other than representations and warranties expressly made in writing;
 - (f) your obligations under the Agreement will continue despite any defect or breakdown of the Hire Equipment or any other matter concerning the Hire Equipment; and
 - (g) except as disclosed in writing to Qube, neither the entry into an Agreement or performance of these Conditions will conflict with or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which you are a party or which is binding on you or any of your assets.
- 22.8. Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Hire Equipment which cannot be excluded, restricted or modified.

23. General

- 23.1. A notice must be in writing and handed personally or sent by email or prepaid mail to the address of the addressee shown in the Invoice. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by email are deemed received on confirmation of successful transmission.
- 23.2. These Conditions are binding upon you and QUBE, your and QUBE's successors and assigns and are governed by the laws of New South Wales from time to time. The parties agree to the non-exclusive jurisdiction

of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

- 23.3. If you take possession of or retain any Goods and/or Hire Equipment after the provision of these Conditions, these Conditions are valid and binding on you whether or not you have signed them.
- 23.4. If there is any inconsistency between these Conditions and the terms of any other document or quote provided to you, these Conditions will prevail to the extent of the inconsistency.
- 23.5. You acknowledge that the person signing any quotation, Invoice, Agreement or other document on your behalf has the authority to bind you. In the event that, due to any alleged deficiency in such authority, you are not liable then the person signing will be personally liable under the Agreement.
- 23.6. No failure to exercise nor delay in exercising any right, power or remedy by Qube operates as a waiver.
- 23.7. If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Conditions, without affecting the enforceability of the remaining terms.
- 23.8. Qube's rights under these Conditions are in addition to, and do not exclude, any right at common law, equity or any other agreement between you and Qube.
- 23.9. Qube may amend these Conditions at any time by providing 30 days' written notice to you of the proposed changes. Any variations or amendments will apply to orders placed after the date specified in the notice.
- 23.10. You are responsible for the payment of all taxes and levies, duties or charges which arise under or in connection with any Agreement (including any stamp duty).
- 23.11. You agree to:
- (a) execute and deliver any instruments; and
 - (b) do such other things,
- as Qube may at any time request in connection with the enforcement of its rights under these Conditions and any Agreement.
- 23.12. You must comply with the Australian Privacy Principles in connection with any personal information supplied to you in connection with this Agreement.