

SECTION A - ALL CUSTOMERS

1. DEFINITIONS

- 1.1 **"Agreement"** means the agreement between the Supplier and the Customer for Goods and/or Hired Goods and includes any customer credit account application, invoices, tenders, quotations, work authorisation, Hire Schedule or any other work commencement forms provided by the Supplier to the Customer.
- 1.2 **"Amount Owing"** means all amounts by the Customer to the Supplier under or in connection with this Agreement
- 1.3 **"Customer"** means a person, firm, organisation, partnership, corporation or other entity (including trust) whose order for the purchase of Goods and/or request for supply of Hired Goods is accepted by the Supplier.
- 1.4 **"Director"** means where the Customer is a corporation, all directors of that corporation, and where the Customer is a trust that has a corporate trustee, all directors of the trustee.
- 1.5 **"Goods"** means all goods sold and delivered by the Supplier to the Customer, and where the context so permits shall include any supply of Hired Goods by the Supplier to the Customer.
- 1.6 **"Guarantor"** means that person (or persons), or entity who agrees herein to be liable for the Amount Owing of the Customer and includes all directors of the Customer where the Customer is a corporation and where the Customer is a trust all trustees of the trust and all directors of the trustee if there is a corporate trustee of the trust.
- 1.7 **"Hire Charges"** means the amount the Customer must pay to the Supplier (as set out in any invoice and/or Hire Schedule) for the full Hire Period for the Hired Goods, and forms part of the Amount Owing. The Supplier reserves the right to amend the Hire Charges in accordance with any change to its standard pricing for the Hired Goods. Additional Hire Charges may apply if the Hired Goods are used more than 8 hours a day or more than 48 hours per week in total.
- 1.8 **"Hired Goods"** means the provision by the Supplier to the Customer of Goods on a hire basis (i.e. the Goods are being hired, and are not being sold, transferred, given or passed, from the Supplier to the Customer), and includes installation and/or dismantling the Hired Goods as described in clause 21.
- 1.9 **"Hire Period"** means the period of hire of the Hired Goods.
- 1.10 **"Hire Schedule"** means any document that records the Hire Period and the Hire Charges for the Hired Goods.
- 1.11 **"Limited Liability Cover"** means a fee for loss, theft or damage of the Hired Goods.
- 1.12 **"Long Distance Location"** means any location in excess of 50km of the nearest Supplier local branch.
- 1.13 **"Off-Hire"** means when the Customer no longer requires the Hired Goods and it is available for collection by the Supplier, it must contact the Supplier by 9.00 am of the Off-Hire date. The Supplier will issue an Off-Hire number which must be recorded and kept by the Customer.
- 1.14 **"Price"** means the cost of the Goods (including the Hire Charges for the Hired Goods)

as agreed between the Supplier and the Customer.

1.15 **"PPSA"** means *Personal Property Securities Act* (Cth) 2009.

1.16 **"Quoted Date"** means the date of delivery as agreed between the Supplier and the Customer.

1.17 **"Start Date"** means when the date when (a) if the Customer is collecting the Hired Goods, when it collects the Hired Goods from the Supplier's premises or (b) if the Supplier is delivering the Hired Goods, when the Supplier loads the Hired Goods onto any vehicle for delivery to the Customer's premises.

1.18 **"Supplier"** shall mean JTL Holdings Pty Ltd (ABN 67 159 419 860) JTL Holdings Pty Ltd t/as Orange Truck & Ag (ABN 67 159 419 860) , and includes their successors and assigns.

1.19 **"Terms"** means these terms and conditions and where the context so permits shall include the Agreement formed between the Supplier and the Customer and/or Directors and Guarantor/s.

2. INTERPRETATION

2.1 The headings used in these Terms do not form part of these Terms and are for convenience only.

2.2 Words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.

3. GENERAL

3.1 These Terms replace any previous agreements or terms and conditions of sale or negotiation, understanding, or communication in relation to the supply of Goods and/or Hired Goods.

3.2 Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's deviating from or inconsistent with these Terms are expressly rejected by the Supplier.

3.3 Any variations to these Terms not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.

3.4 A tender or quotation will not constitute an offer to sell Goods and/or Hired Goods to the Customer. No contract for the supply of Goods and/or Hired Goods shall exist between the Supplier and the Customer unless the Customer's order for Goods and/or Hired Goods has been accepted by the Supplier. The Supplier may accept or refuse any order for Goods and/or Hired Goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer (based on the customer credit account application).

3.5 Once an order for Goods and/or Hired Goods, from a Customer has been accepted by the Supplier (even if this acceptance has not been notified to the Customer):

a) the order cannot be cancelled by the Customer without the written consent of the Supplier; and

b) the order cannot be varied by the Customer any time after 4 hours of the

Customer submitting the order to the Supplier.

3.6 The Supplier may vary these Terms by notice in writing to the Customer, including through notified variations made on the Supplier's website.

3.7 Should there be any variation to any of the information supplied by the Customer to the Supplier concerning the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust), or key information in the customer credit account application that the Supplier has relied upon, the Customer shall forthwith notify the Supplier in writing. If this information is not provided, and the Supplier suffers loss as a result, the Customer agrees to compensate the Supplier for an amount that is no less than the amount of loss that the Supplier suffered.

3.8 Any order received by the Supplier from the Customer for the supply of Goods and/or Hired Goods and the Customer's acceptance of Goods and/or Hired Goods supplied by the Supplier shall constitute acceptance of these Terms.

3.9 Upon acceptance of these Terms by the Customer the Terms are irrevocable and can only be varied in accordance with these Terms.

3.10 The Supplier's agents or representatives are not authorised to make any representations, or statements on behalf of the Supplier (including any purporting to vary these Terms or enter further agreements) and the Supplier shall not be liable for any unauthorised representations or statements made by the Supplier's agents or representatives.

3.11 In the event that the whole or any part or parts of any provisions in these Terms should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these Terms but the validity and enforceability of the remainder of these Terms shall not be effected.

3.12 The Supplier reserves the right to sub-contract the manufacture and/or supply of the Goods and/or Hired Goods or any part thereof to a third party.

3.13 The Customer acknowledges that the Supplier may hire its Hired Goods from a third party and in that event title to the Hired Goods remains with that third party. The Customer agrees, upon reasonable notice, to allow that third party to access the location where the Hired Goods are located from time to time to inspect the Hired Goods. The Customer acknowledges and agrees that if the Supplier's agreement with that third party terminates during the Hire Period for any Hired Goods, unless otherwise agreed by the Supplier in writing any hire of Hired Goods by the Supplier to the Customer under these Terms will automatically terminate and the Supplier may immediately recover possession of the Hired Goods from the Customer. The Supplier will not be liable to the Customer in any circumstance for any claim that the Customer may have, or for any loss or damage suffered, as a result of such termination.

3.14 The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

3.15 Each party must execute any document and perform any action necessary to give full effect to these Terms, whether before, or after performance of these Terms.

3.16 The Supplier and/or Customer and/or Guarantor agree and acknowledge that the customer credit account application may be completed by the Customer utilising the

Supplier's online application process through the Supplier's website. This may include the insertion of the Customer's and/or Guarantor's electronic signature. Once this application is completed in this method and if the application is deemed acceptable by the Supplier, the Supplier and/or Customer and/or Guarantor agree that the Supplier may rely on this application (and any accompanying Guarantee) as if it had been executed in writing by the Customer and/or Guarantor in writing. To be clear, once the application is accepted by the Supplier, if Goods and/or Hired Goods supplied by the Supplier to the Customer, the Customer and/or any Guarantor agree that such supply of Goods and/or Hired Goods are made on the basis of these Terms as if the Terms had been executed by the Supplier and/or Customer and/or Guarantor in writing.

3.17 The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these Terms by notice in writing to the Customer. The Customer agrees that any order for the purchase of Goods and/or hire of Hired Goods submitted by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

3.18 These Terms and the supply of the Goods and/or Hired Goods by the Supplier to the Customer shall be governed by and construed in accordance with the laws of New South Wales.

3.19 Notice to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier at its current business address. Notices to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known address provided by the Customer to the Supplier and unless the contrary is proved shall be taken as delivered on the second business day following posting.

3.20 Clerical errors in computation, typing or otherwise of any price list, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of the Supplier will be subject to correction. The Supplier may complete any blanks on any relevant document on the Customer's behalf.

4. PRICES (INCLUDING HIRE CHARGES AND OTHER CHARGES)

4.1 The prices of Goods and/or Hired Goods shall be indicated on any invoice, tender, quotation, delivery docket, Hire Schedule or other commercial form provided by the Supplier to the Customer in respect of Goods and/or Hired Goods, plus any transportation, freight, postage, packaging, handling, insurance and GST (where applicable, GST will be charged at the appropriate rate at the date of invoice).

4.2 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that the taxes and duties are expressly included in any quotation given by the Supplier.

4.3 The Customer must immediately check all prices, and any disputes in relation to those prices must be communicated to the Supplier in writing within 7 days of the invoice date. In the event that no communication is received from the Customer within that 7 day period, the prices are deemed to be accepted by the Customer.

4.4 The Customer must pay the Supplier the Hire Charges set out in the Hire Schedule for the full Hire Period. The Customer is not entitled to any discount or rebate if the

Hired Goods are not used by the Customer for the entire Hire Period. The Supplier reserves the right to amend the Hire Charges in accordance with any change to its standard pricing for the Hired Goods.

4.5 Additional Hire Charges may apply if the Hired Goods are used more than 8 hours a day or more than 48 hours per week.

4.6 When the Customer no longer requires the Hired Goods and it is available for collection by the Supplier, it must contact the local branch of the Supplier by 9.00am of the Off-Hire date. The Supplier will issue an Off-Hire number which must be recorded and kept by the Customer.

4.7 Provided the Off-Hire number is allocated no later than 9.00am on the Off-Hire date and access is granted to enable collection of the Hired Goods, Hire Charges will cease from the Off-Hire date. If access is not granted to the Supplier to collect the Hired Goods or the Hired Goods are not ready to be collected for whatever reason, Hire Charges will continue to apply until the Supplier is able to collect the Hired Goods.

4.8 If a minimum hire period applies in relation to the Hired Goods, then the minimum prices payable for the Hired Goods are those in respect of that period regardless of the off hire date.

4.9 In addition to the Hire Charges, the Customer agrees to pay:

- a) for any operational guidance, instructions or training of the Hired Goods or other services provided by the Supplier at the rates agreed with the Customer;
- b) for any additional or special conditions to permit and gain access to the Customer's site including but not limited to site inductions;
- c) if the Customer requires the Supplier to deliver, collect or install the Hired Goods, the Customer will be liable for the cost of delivery, collection or installation. In these circumstances, the Customer is liable for all risks associated with the delivery of the Hired Goods. The Supplier will not be responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other

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labour difficulties, shortages of or inability to obtain shipping space or land transportation;

d) for any consumables and trade materials included but not limited to fuel charges;

e) tax and government charges, levies or fines (including any environmental levy) in relation to the hire of the Hired Goods;

f) GST subject to a taxable invoice (all amounts payable are exclusive of GST unless otherwise specified). The Customer acknowledges and agrees that there is no sale or other disposal of title to fuel under these Terms and that the Supplier shall be exclusively entitled to claim any fuel tax credits;

g) charges for payments made by credit card;

h) charges for delivery and collection and installation;

- i) if applicable, Limited Liability Cover fee;
- j) for cleaning and repair of Hired Goods if not returned in clean, good working condition;
- k) costs for changing out equipment and mobilisation and demobilisation costs;
- l) for any variations that are necessary or requested by the Customer; and/or
- m) the cost passed on by the Supplier arising out of a change in law, code, regulations or customer policy or guideline.

4.10 The Supplier may charge additional costs for the Hired Goods at the daily rate for periods during which the Hired Goods are being delivered to or collected from the Customer or during which the Supplier is unable to deliver or collect the Hired Goods through no fault of its own or during periods when the Hired Goods are unavailable for hire by the Supplier due to damage caused by the Customer. The imposition of these additional costs does not mean that the Supplier agrees to extend the hire period for the Hired Goods.

4.11 If the Customer returns the Hired Goods to the Supplier's premises after the end of the Hire Period, the Customer will be charged a minimum of an additional full day hire. The Customer will remain liable to be charged for the Hired Goods until it is returned to the Supplier.

4.12 If the Customer wants to return the Hired Goods before the end of the Hire Period, the Supplier may, at its absolute discretion, accept return of the Hired Goods, and if it does so, may:

- a) attempt to re-hire the Hired Goods, in which case the Customer will be liable for those Hire Charges payable up until the date of the commencement of the rehire or until the end of the Hire Period, whichever is earlier, and
- b) revise the Hire Charges payable by the Customer from the start of the Hire Period to account for the reduction to the Hire Period.

4.13 The Customer is required to pay all fees, charges and costs that may become due and payable under the Hire Schedule.

4.14 If a Customer does not pay the amount of the Hire Schedule invoice by the payment due date, a late payment fee of 2% per month, compounding monthly, may be imposed. In addition, without limiting clause 11 (i.e. Indemnities), the Customer will be liable to indemnify the Supplier for all expenses incurred by the Supplier in recovering any amounts which the Customer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).

4.15 The Supplier may set-off against any credit owed to the Customer, any amounts which are owing by the Customer to the Supplier pursuant to this Hire Schedule.

4.16 Notwithstanding any prior acknowledgment by the Supplier of the price of Goods and/or Hired Goods, the prices specified for Goods and/or Hired Goods may at the Supplier's option be subject to the Supplier's own prices and charges in effect at the time of delivery. For example, the Supplier shall be entitled to alter the price of Goods and/or Hired Goods in the invoice or price as a consequence of currency fluctuations, taxes, customs duty, GST, sales tax or other government imposts. Further, the Supplier is entitled to revise its prices and related charges without prior notice being

given to the Customer. The Supplier may also revise its prices and any related charges in circumstances where the Supplier incurs further costs or such charges as a result of non-disclosure of information by the Customer to the Supplier, unforeseen Customer site problems or incorrect physical dimensions, weights or distances given by the Customer and relied on by the Supplier.

4.17 In this clause the expressions "GST", "Input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

4.18 With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by Customer under these Terms are exclusive of GST.

4.19 If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay the Supplier an additional amount equal to the GST payable on or for taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the provision of a tax invoice

5. PAYMENT AND ACCOUNT TERMS

5.1 Unless otherwise agreed in writing by the Supplier, the Customer shall pay for all Goods or Hired Goods delivered at the time of delivery of the Goods or Hired Goods.

5.2 The Customer agrees that the Supplier may debit the Customer's credit card, as provided in Section F of this Agreement, in accordance with terms of payment between the Supplier and the Customer, to satisfy any part or all of the monies payable by the Customer to the Supplier for Goods and/or Hired Goods.

5.3 At the Supplier's sole discretion a non-refundable deposit may be required from the Customer.

5.4 If the Customer wants to return the Hired Goods before the end of the Hire Period, the Supplier may revise the Hire Charges payable by the Customer from the start of the Hire Period to account for the reduction to the Hire Period.

5.5 Where the Supplier has agreed to extend credit to the Customer for the supply of Goods and/or Hired Goods, the Customer must pay for the Goods and/or Hired Goods within 30 days of the Goods and/or Hired Goods being supplied by the Supplier to the Customer, or as otherwise agreed in writing by the Supplier and Customer.

5.6 Credit extended to the Customer for all Goods and/or Hired Goods will be provided in the absolute discretion of the Supplier.

5.7 Any credit limit approved by the Supplier is approved for the Supplier's internal purposes only and does not limit or restrict the Customer's account.

5.8 Any claims for credit by the Customer must be made within 7 days of receiving the Supplier's invoice.

5.9 The Supplier will be entitled to set off against any monies owing to the Customer by the Supplier on any account whatsoever.

5.10 Payment for Goods and/or Hired Goods must be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card, or by any other method as agreed

to between the Customer and the Supplier.

5.11 Payments will be applied to outstanding invoices of the Customer at the sole discretion of the Supplier. The Supplier reserves the right to charge a credit card handling fee at its discretion and at rates advised by the Supplier from time to time.

5.12 The Customer shall pay any legal costs (on a solicitor/Customer indemnity basis), lodgement and withdrawal of any caveat(s), stamp duties and other expenses payable on these Terms or any credit application, guarantee or other security documents signed by the Customer together with all collection costs including legal fees (on a solicitor/Customer indemnity basis) and dishonoured cheque fees suffered or incurred by the Supplier in connection with the supply of Goods and/or Hired Goods by the Supplier.

5.13 The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit, without notice to the Customer or any guarantor of the Customer.

5.14 The Customer shall not set off against the Price amounts due from the Supplier.

5.15 In the event that:

- a) the Supplier retains possession or control of the Goods; and
 - b) payment of the Price is due to the Supplier; and
 - c) the Supplier has made a demand in writing to the Customer for payment of the Price and the Supplier has not received the Price for the Goods,
- then whether property in or title to the Goods has passed to the Customer or has remained with the Supplier, the Supplier may dispose of the Goods and may claim from the Customer any loss to the Supplier on such disposal.

6. INTELLECTUAL PROPERTY

6.1 Where the Supplier has designed, drawn, written, prepared, manufactured or hired Goods for the Customer, then the copyright (or any other attaching intellectual property right) in those designs and drawings, prototypes, productions, documents and Goods shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.

6.2 Where the Customer has supplied drawings, designs or concepts for Goods to be supplied by the Supplier, the Customer warrants that all designs or instructions provided to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order, and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

7. TRUST AND TRUSTEES

7.1 Where the Customer is a trustee:

- a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) and accounts of the trust if and when requested by the Supplier.
- b) the Customer warrants that it has full power and authority to enter into this agreement on behalf of the trust and that it shall be bound by these Terms both personally and in their capacity as trustee irrespective of whether or not it

discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.

c) the Customer warrants that the trust has agreed to indemnify the trustee in respect of all liability incurred by the trustee pursuant to this agreement.

d) the trustee of the trust acknowledges that it has entered into this agreement in its capacity as trustee of the trust and also in its own capacity.

8. DEFAULT BY CUSTOMER AND TERMINATION

8.1 In the event of:

a) any default or failure by the Customer in making due and punctual payment to the Supplier of any monies owing by the Customer;

b) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer, or a receiver and manager, administrator or controller is appointed in respect of any assets or groups of assets of the Customer (**Insolvency Event**);

c) the Customer and/or Director(s) goes into bankruptcy or is wound up;

d) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its Amount Owing as and when they fall due;

e) there is a breach by the Customer of any of these Terms,

f) the Customer offers the Goods and/or Hired Goods for sale to any third party, then all monies payable by the Customer to the Supplier shall become immediately due and payable notwithstanding the due date of payment shall not have expired, and the Supplier may without prejudice to any other rights it may have do any or all of the following:

1) withdraw any credit facilities which may have been extended to the Customer;

2) withhold any further deliveries of Goods;

3) in respect of Goods already delivered onto the Customer's premises enter onto those premises and recover and resell the Goods;

4) recover from the Customer the cost of materials or Goods acquired for the purposes of future deliveries;

5) any discount, markdown, reduction or special price, previously offered by the Supplier to the Customer may be withdrawn, or cancelled, and the price shall become the Supplier's standard price as at the date of the original sale; and/or

6) cease to supply Goods (including Hired Goods) to the Customer.

8.2 The Customer agrees to pay to the Supplier all losses, damages, costs and other expenses whatever suffered by the Supplier as a result of any Customer event noted above.

8.3 The Supplier may terminate the Agreement with immediate effect by serving a written notice on the Customer if the Customer:

a) becomes unable to lawfully perform the Agreement;

b) suffers an Insolvency Event; or

c) commits a breach of the Agreement which it does not remedy (if capable of remedy) within 5 Business Days of receiving written notice of breach.

8.4 The Supplier may also terminate the Agreement at any time for convenience by giving the Customer at least 24 hours' notice.

8.5 The right of termination is in addition to any other rights under the Agreement.

9. SECURITY OBLIGATIONS

9.1 Security Obligations

a) For the purpose of securing payment of the Amount Owing, the Guarantor/s hereby charge in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge and maintain a Caveat upon title of the Customer's real property.

b) The Customer shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register.

c) At the cost of the Customer, the Customer shall from time to time at the written request of the Supplier execute any deed, dealing, assurance or other document which the Supplier shall in its absolute discretion require the Customer to execute and do all such other acts, matters and things as the Supplier shall consider reasonable for the purpose of preserving, perfecting or protecting the Caveat.

9.2 The Customer indemnifies the Supplier from and against all of the Supplier's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause 27.

9.3 The Customer hereby acknowledges and agrees that the Supplier has a lien over all Goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

9.4 The Customer warrants that all statements made and documents provided in connection with this agreement and all representations that the Customer has made or may make during the Terms to the Supplier are true and correct.

9.5 The Customer warrants that the credit account is required for the Customer's business or commercial purposes and will not be used for personal, domestic or household purposes.

9.6 The Customer acknowledges that the Supplier has relied on the correctness of these warranties in approving the credit application and continues to rely on these warranties in its further dealings with the Customer.

10. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

10.1 In this clause:

a) financing statement has the meaning given to it by the PPSA;

b) financing change statement has the meaning given to it by the PPSA;

c) security agreement means the security agreement under the PPSA created between the Customer and the Supplier by these Terms; and

d) security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to Terms in writing the Customer acknowledges and agrees that

these Terms:

a) constitute a security agreement for the purposes of the PPSA; and

b) create a security interest in:

1) all Goods and/or Hired Goods previously supplied (sold, hired or otherwise) by the Supplier to the Customer (if any); and

2) all Goods and/or Hired Goods that will be supplied (sold, hired or otherwise) in the future by the Supplier to the Customer.

10.3 The Customer undertakes to:

a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:

1) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

2) register any other document required to be registered by the PPSA;

3) correct a defect in a statement referred to in clause 10.1(a) or 10.1 (b); and/or

4) comply with section 275 of the PPSA.

b) indemnify, and upon demand reimburse, the Supplier 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 and/or Hired Goods charged thereby;

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

d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or Hired Goods in favour of a third party without the prior written consent of the Supplier; and

e) immediately advise the Supplier of any material change in its business practices of selling the Goods and/or Hired Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.

10.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Customer waives its rights as a grantor and/or an Amount Owed or under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 10.3 to 10.7.

10.9 The Customer must not dispose or purport to dispose of, or create or purport to create or permit to create any security interest in the Goods and/or Hired Goods other than with the express written consent of the Supplier. The Customer must not lease, hire, bail or give possession ("sub-hire") of the Goods and/or Hired Goods to anyone else unless the Supplier (in its absolute discretion) first consent in writing. If the Supplier

does consent any such sub-hire must be in writing in a form acceptable to the Supplier and must be expressed to be subject to the Supplier's rights under these Terms. The Customer may not vary a sub-hire without the prior written consent of the Supplier (which may be withheld in its absolute discretion).

10.10 The Customer must ensure that the Supplier is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hiree, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Goods and/or Hired Goods.

10.11 The Supplier must take all steps including registration under the PPSA as may be required, to ensure that any security interest arising under or in respect of the subhire is enforceable, perfected and otherwise effective under the PPSA, enabling the Customer to gain (subject always to the Supplier's rights) first priority (or any other priority agreed to by the Supplier in writing) for the security interest, and enabling the Customer and the Supplier to exercise the Customer respective rights in connection with the security interest.

10.12 To assure performance of the Customer's obligations under this clause the Customer hereby gives the Supplier an irrevocable power of attorney to do anything the Supplier considers necessary to protect its interest in the Goods. The Supplier may recover from the Customer the cost of doing anything under this clause, including registration fees.

11. LIMITATION OF LIABILITY AND INDEMNITY

11.1 The Supplier agrees that all Goods (including Hired Goods) and their use shall be at the Customer's sole risk and the Supplier will not be liable for any loss, damage or injury that the Customer may incur or that may arise from any cause whatsoever including any fault or other defect in the Goods and/or Hired Goods.

11.2 The Customer agrees that the Supplier is not liable for any special, indirect or consequential loss arising in any way in respect of the Goods and/or Hired Goods or their use provided and this exclusion of liability applies whether that loss or liability arises at general law or under these Terms and whether or not including loss or liability arising as a consequence of negligence.

11.3 The Supplier is not liable for any loss or damage to any property or for death or personal injury (to the Customer's personal or any another person) caused or contributed in the installation or dismantling of Hired Goods (whether by negligence or otherwise).

11.4 The Customer accepts full responsibility for, and indemnifies the Supplier against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Goods and/or Hired Goods however arising, whether from the Customer's negligence or that of the Supplier and without limiting the foregoing whether or not the Goods and/or Hired Goods were being operated or transported by an agent or servant of the Supplier's or any other person for whose acts the Supplier may be held to be responsible for.

11.5 The Customer agrees to indemnify the Supplier for any costs or loss or damage incurred in recovering Goods and/or Hired Goods, whether those Goods and/or Hired

Goods were abandoned, unlawfully detained or otherwise not returned to the Supplier in accordance with these Terms.

11.6 Without limiting the Supplier's liability at law in tort, the Customer agrees to indemnify, and keep indemnified, the Supplier and its directors, officers, agents and assigns against any liability for any claims made against the Supplier, or employees, arising out of or in connection with any breach by the Customer of this application or these Terms, or any loss, damage or injury suffered by a third party, caused by any negligence, or deliberate act, by the Supplier and its directors, officers, agents and assigns in the course of installing or dismantling Goods and/or Hired Goods for the Customer.

11.7 Where the Supplier gives advice, recommendations, information, assistance and/or service to the Customer regarding the suitability or purpose of the Goods and/or Hired Goods, or in connection with the design, delivery times, dimensions, installation or use of the Goods and/or Hired Goods, then it is given in good faith and the Supplier shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on any such advice, recommendations, information, assistance and/or service.

12. STATUTORY GUARANTEES

12.1 Clauses 12.2 and 12.3 only apply if the Customer is deemed a "Consumer" for the purposes of section 3 of the Australian Consumer Law ("ACL").

12.2 The Supplier's Goods and Hired Goods come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

12.3 To the extent the Supplier's Goods and Hired Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier may limit its liability to repair or replacement of the Goods and Hired Goods or the payment of the cost of repairing or replacing the Goods and Hired Goods, in accordance with section 64A of the Australian Consumer Law.

13. COLLECTION AND DELIVERY OF GOODS

13.1 Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer, included to any third party's address. If no such address is nominated then delivery will be deemed to occur at the time when the Goods are ready for collection at the Supplier's premises. The Supplier will endeavour to deliver the Goods on or before the Quoted Date. The Customer must ensure that there is an authorised representative and/or agent available to accept the Goods upon delivery.

13.2 The Customer recognises that the Supplier is not a common carrier and does not accept the obligation as such. Therefore the Supplier may refuse the handling, lifting and/or carriage of Goods, including Hired Goods, for any person in its sole discretion

and without being bound to give reason to the Customer for such refusal.

13.3 The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.

13.4 The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.

13.5 The Customer authorises the Supplier to deliver Goods to the place nominated by the Customer and to leave the Good at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery of the Goods to the nominated delivery place.

13.6 The Supplier will not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Goods delivered.

13.7 Any notified times for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of Goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.

13.8 The Customer will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

13.9 The Supplier reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not be a repudiation of the contract and will not entitle the Customer to determine the contract in whole or in part.

13.10 The Supplier shall not be liable to the Customer for any loss or damage attributable to failure by the Supplier to deliver the Goods.

13.11 Where the Supplier cannot access the Customer's address to deliver the Goods, the Goods shall be delivered and left as close as practicable to the Customer's address. Or in the event the Customer requests the Supplier to enter a property to deliver the Goods, then the Supplier accepts no responsibility for any damage caused by the Supplier in doing so.

13.12 Unless agreed otherwise in writing, prior to delivery, the unloading of Goods is the Customer's responsibility. The Supplier is not responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.

13.13 In relation to Hired Goods:

a) The Customer agrees that it is their responsibility to collect and return the Hired Goods from and to the Supplier. The Customer must arrange for labour necessary to load and unload the Hired Goods from any delivery vehicle. If the Customer or its authorised persons are not at the delivery site the Supplier may

elect to unload the Hired Goods which will be at the Customer's risk from the time of delivery.

b) The Customer agrees that if the Supplier agrees to collect the Hired Goods from the Customer's premises, the Hired Goods must be left in an appropriate, easily identifiable and accessible area and the Supplier will not be deemed to have accepted return of the Hired Goods in good repair and condition until such time as the Hired Goods have been fully inspected by the Supplier at its depot following such collection.

14. CLAIMS FROM CUSTOMER

14.1 Subject to clause 14.5, all claims by the Customer relating to failure by the Supplier to comply with an order of the Customer whether due to shortfall, defect, incorrect delivery or otherwise must be made by written notice to the Supplier within seven (7) days of the date of delivery. If the Customer fails to provide such notice within seven (7) days then the Customer shall be deemed to have accepted the Goods and shall not be entitled to make any claim against the Supplier.

14.2 These Terms shall not exclude, or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Australian Consumer Law) or cause any part of this clause to be void or unenforceable. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.

14.3 Unless the Goods supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause 12.2 for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:

a) in the case of Goods:

- 1) the replacement of the Goods or the supply of equivalent Goods;
- 2) the repair of the Goods;
- 3) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
- 4) the payment of the cost of having the Goods repaired.

b) in the case of Goods Hired:

- 1) the total Hire Charges payable by the Customer to the Supplier at the site at which the claim arose.

14.4 Subject to clause 14.2 the Supplier shall not be liable for any direct or indirect loss whatsoever including consequential loss, loss of profits, loss of opportunity or loss of use.

14.5 The Supplier 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 Customer failing to properly maintain or store any Goods and/or Hired Goods;
- b) The Customer using the Goods and/or Hired Goods for any purpose other than that for which they were designed;
- c) The Customer continuing the use of any the Goods and/or Hired Goods after

any defect became apparent or should have become apparent to a reasonably prudent operator or user;
d) The Customer failing to follow any instructions or guidelines provided by the Supplier; or
e) Fair wear and tear, any accident or act of God.

SECTION B - GOODS

15. GOODS

15.1 The Goods are as described on invoices, tenders, quotations, work authorisation, and where the context so permits shall include on any Hire Schedules or any other work commencement forms provided by the Supplier to the Customer.

15.2 The Customer agrees that it does not rely on the information, skill or judgment of the Supplier in relation to the suitability of the Goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods is provided without any liability by the Supplier whatsoever.

15.3 The Customer agrees that the Supplier relies on the instructions, directions, information, skill and judgement provided to the Supplier by the Customer in order for the Supplier to provide Goods to the Customer.

15.4 The Customer will have in place all necessary insurance for the supply of the Goods by the Supplier in order to cover any loss, damage or costs suffered or incurred by either the Customer or the Supplier as a result of the supply of the Goods.

15.5 If the Supplier is unable to supply the Goods to the Customer, the Supplier may in its discretion supply alternative goods to the Customer. If the alternative goods are not suitable to the Customer, the Supplier will not be liable for any claims arising out of the Supplier's inability to supply the Goods or alternatives suitable to the Customer. This is in addition to the Supplier's rights to decline to supply the Goods to the Customer.

15.6 The Customer acknowledges that the Supplier may immediately cancel any particular supply of Goods to which these Terms apply at any time before the particular Goods to which these Terms relates are provided by giving written notice to the Customer. The Supplier will not be liable for any loss or damage whatsoever arising from such cancellation.

16. TITLE AND RISK FOR GOODS

16.1 The Goods shall be at the sole risk of the Customer as soon as they are collected by the Customer or dispatched by the Supplier from the Supplier's premises.

16.2 The Supplier may mark or label the Goods to identify the Goods in any manner which the Supplier considers appropriate.

16.3 Property in and title to Goods being sold to the Customer will not pass to the Customer until such time as the Price and all other amounts which are owed or which may become payable to the Supplier by the Customer have been paid for in full and the Customer has complied with these Terms and until then:

a) the Customer will hold the Goods as trustee and agent for the Supplier;

b) the Goods must be stored separately and in a manner enabling them to be identified as Goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;

c) the Customer may sell the Goods in the ordinary course of its business as trustee and agent of the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and

d) the Supplier may require the Customer to return the Goods to the Supplier or its authorised representative on demand and the Supplier may enter upon the premises of the Customer or any other premises occupied or controlled by the Customer to inspect or repossess the Goods.

16.4 If the Supplier determines, in its absolute discretion, that the PPSA applies to any transaction, the Customer agrees that:

a) It grants a first ranking security interest and purchase money security interest in the Goods for the purposes of the PPSA, as security for all Amount 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 the Supplier (where applicable), and that it waives the right to receive any verification statement;

b) It will do all things necessary to enable the Supplier to register and perfect its security interest in the Goods and, if requested by the Supplier, will not take possession of the Goods unless the Supplier has registered a financing statement designating a purchase money security interest over them;

c) The Supplier may appropriate (or re-appropriate despite any prior appropriation) monies received in respect of the Customer in its absolute discretion toward any part of the Amounts Owing, including in order to maximise the extent to which it can have recourse to its security interest in the Goods held by the Customer;

d) To notify the Supplier of any change in writing of the Customer's details set out in the credit application; and

e) The terms of this clause 16.4 prevail over any other term in the Agreement to the extent of any inconsistency with respect to Goods.

16.5 If any of the Goods are damaged or destroyed prior to property in and title to the Goods passing to the Customer, the Customer hereby assigns to the Supplier all insurance proceeds payable to the Customer for the loss or damage of the Goods. The Customer shall at the time that it makes any claim on an insurer in connection with the loss or damage to the Goods notify that insurer of the assignment of rights pursuant to this clause.

16.6 Unless agreed in writing by the Supplier, the Supplier will not accept any return of Goods that are being sold to the Customer.

16.7 Goods that are accepted for return by the Supplier will attract a charge to the Customer to cover restocking and repackaging charges. The amount of this charge will be determined by the Supplier but will be not less than 20% of the price of the

Goods. Such charge shall be deducted from the amount or credit allowed. The original invoice number and a copy of the original invoice must accompany all Goods returned to the Supplier. The Supplier, in its sole discretion, may request immediate payment of this charge by the Customer upon return of the Goods.

16.8 The Customer shall insure the Goods (including any Hired Goods) against theft or any damage until such Goods have been paid for, or until they are sold by the Customer, or until the Hired Goods have been returned to the Supplier, whichever occurs first, and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the Goods or fails to supply details of its insurance policy the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the Goods supplied to the Customer.

16.9 The Customer agrees to store the Goods in good and serviceable condition, and in such a manner as to identify that the Goods remain the property of the Supplier until the conditions in clause 16.3 are met, and the Customer agrees to keep complete records as to the use and sale to third parties of such Goods.

SECTION C – HIRED GOODS

17. HIRED GOODS

If the Supplier agrees to provide Hired Goods to the Customer then the following additional terms and conditions in this clause apply:

17.1 The Customer agrees that it does not rely on the information, skill or judgment of the Supplier in relation to the suitability of the Hired Goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier in relation to the Hired Goods is provided without any liability by the Supplier whatsoever.

17.2 The Customer agrees that the Supplier relies on the instructions, directions, information, skill and judgement provided to the Supplier by the Customer in order for the Supplier to provide Hired Goods to the Customer.

17.3 The Supplier agrees to hire the Hired Goods to the Customer for the Hire Period.

17.4 The Customer is to be charged and will pay to the Supplier the Hire Charges for the Hired Goods for the Hire Period and the Customer is entitled to use the Hired Goods for the Hire Period. Any variation to the Hire Period must be agreed to by the Supplier in writing.

17.5 The Hire Schedule will specify the Hire Charges applicable.

17.6 Hired Goods hired for at least 5 days in a seven day continuous period, will be charged at the 'weekly rate' of Hire Charges.

17.7 The Supplier reserves the right to charge a minimum period of hire for certain types of Hired Goods. If the Supplier exercises its right to charge a minimum period of hire of one day, the Hired Goods are taken as hired between the hours of 9.00 am and 5.00 pm.

17.8 The Supplier hires the Hired Goods to the Customer at its absolute discretion and may refuse to hire to the Customer for reasons including but not limited to failing to

provide adequate identification and perceived safety risks.

17.9 The Supplier may in its sole discretion determine that the Off-Hire date is when the Hired Goods become Off-Hired and not at the end of any specified Hire Period.

Otherwise, the Supplier may in its sole discretion, decide whether to accept return of the Hired Goods before the end of the Hire Period. Such an acceptance does not alter the Hire Period and the Customer will remain liable for all Prices payable to the Supplier despite early return of the Hired Goods.

18. WHEN HIRED GOODS INCLUDE MOTOR VEHICLES

Where the Hired Goods hired by the Customer is a Motor Vehicle the following additional conditions also apply to the use of the Customer's Hired Goods:

18.1 Definitions:

'Motor Vehicle' means a car, truck, utility or trailer.

18.2 The Supplier will arrange motor vehicle accident insurance for each Motor Vehicle to cover any damage caused through a motor vehicle accident and the Customer must pay a charge for such insurance. This insurance will not cover the Customer for the loss, theft or other damage to the vehicle (other than a Motor Vehicle accident). If the Motor Vehicle is damaged in a motor accident then the Customer will be liable for the following additional costs:

a) the first \$2,500 of the cost of any damage if the driver is 25 years or over

b) the first \$3,500 of the cost of any damage if the driver is under 25 years;

c) the total cost of repairing damage:

1) to the truck body or pantech;

2) to or caused by a truck mounting device;

3) to tyres;

4) caused other than by the normal use of the Motor Vehicle;

5) caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road; or

6) caused while the Customer is in breach of any clause of these Terms.

18.3 In the event that the Motor Vehicle is lost, stolen or damaged (not through a motor accident) during the Hire Period, the Customer is liable to pay the amount to replace or repair the Motor Vehicle, except where the Customer pays the Limited Liability Cover fee, in which case its liability is subject to the Limited Liability Cover clause (clause 25).

18.4 The Customer is liable to pay the cost of repairing or replacing flat or damaged tyres and other damage to tyres arising outside of the ordinary and reasonable use of the Motor Vehicle.

18.5 The Customer warrants that it will not allow a person to drive a Motor Vehicle if:

a) the person does not hold an unrestricted licence to drive that class of Motor Vehicle;

b) the person is under the age of 21 years;

c) the person is affected by drugs and/or alcohol;

d) the person has been convicted of any offence relating to driving a motor

vehicle under the influence of drugs or more than the legally prescribed limit of alcohol; or

e) the person has previously been refused motor vehicle insurance,

18.6 A breach of any of clause 18.5 will render the Supplier's insurance void and the Customer liable for the costs of repairs or the replacement cost of the Motor Vehicle.

18.7 The Customer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle by the Customer during the Hire Period. If the Supplier pays any such charges the Customer must reimburse the Supplier within 7 days of receiving notification of the charges from the Supplier.

18.8 The Customer must pay a fee for the number of kilometres that the Supplier reasonably believes the Motor Vehicle has travelled during the Hire Period or for excess kilometres if an agreed usage is made within the hire charge.

18.9 Prior to the commencement of the Hire Period the Customer will provide the Supplier with all information required by the relevant legislation for those persons who will operate the Motor Vehicle for or on behalf of the Customer. The Supplier is also permitted to take a copy of any drivers licences at the commencement of the Hire Period.

18.10 The Customer warrants that no Motor Vehicle will be laden in excess of the Motor Vehicle's gross vehicle mass at any time during the Hire Period.

18.11 The Customer must return the Motor Vehicle to the Supplier with a full tank of fuel or the Customer will be liable to pay the Supplier the reasonable cost of filling the fuel tank.

18.12 The Customer acknowledges that these Terms, particularly clause 22 - Customer's Obligations for Hired Goods also apply to Motor Vehicles.

19. TITLE AND RISK FOR HIRED GOODS

19.1 At no time does property in and title to Hired Goods ever pass to the Customer. Except with the prior written consent of the Supplier, the Customer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Hired Goods in any way whatsoever.

19.2 If the Supplier determines, in its absolute discretion, that the PPSA applies to any transaction, the Customer agrees that:

f) It grants a first ranking security interest and purchase money security interest in the Hired Goods for the purposes of the PPSA, as security for all Amount Owed 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 the Supplier (where applicable), and that it waives the right to receive any verification statement;

g) It will do all things necessary to enable the Supplier to register and perfect its security interest in the Hired Goods and, if requested by the Supplier, will not take possession of the Hired Goods unless the Supplier has registered a financing statement designating a purchase money security interest over them;

h) The Supplier may appropriate (or re-appropriate despite any prior appropriation) monies received in respect of the Customer in its absolute discretion toward any part of the Amounts Owed, including in order to maximise the extent to which it can have recourse to its security interest in the Hired Goods held by the Customer;

i) To notify the Supplier of any change in writing of the Customer's details set out in the credit application; and

j) The terms of this clause 19.2 prevail over any other term in the Agreement to the extent of any inconsistency with respect to Hired Goods.

19.3 The Customer shall insure the Hired Goods against theft or any damage until the Hired Goods have been returned to the Supplier, and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the Hired Goods or fails to supply details of its insurance policy the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the Hired Goods supplied to the Customer.

20. HIRE PERIOD

20.1 The Hire Period commences on the Start Date and ends:

a) If the Customer is returning the Hired Goods, when the Hired Goods is back in the possession of the Supplier at the Supplier's premises or the date recorded in the Hire Schedule, whichever is the later, and includes weekends and public holidays and is irrespective of the time the Hired Goods is being used.

21. INSTALLATION AND DISMANTLING OF HIRED GOODS

21.1 If the Customer Hired Goods, it will provide any person of the Supplier with any specific tools, equipment and consumables so required of the persons of the Supplier to install and/or dismantle Hired Goods, unless the Customer requests the Supplier to inform the person of the Supplier to provide their own specific tools, equipment and consumables. If so, additional charges will apply to the tools, equipment and consumables that the Supplier supplies via the person of the Supplier to the Customer.

21.2 The Customer is responsible for the care and supervision of the person of the Supplier whilst they are installing or dismantling Hired Goods for the Customer.

21.3 The Customer is responsible for providing a safe and healthy workplace, and safe systems of work, for the person of the Supplier.

21.4 The Customer is responsible for the operation and/or use of any Hired Goods by the person of the Supplier.

22. CUSTOMER'S OBLIGATIONS FOR HIRED GOODS

22.1 The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Hired Goods at any time without the prior-written approval of the Supplier.

22.2 The Customer must not transfer, assign, encumber, loan, lease or sell the Hired Goods and must not (except for the purpose of returning the Hired Goods) remove

the Hired Goods or allow the Hired Goods to be removed from the Customer's address notified to the Supplier where the Hired Goods were to be used, without the written consent from the Supplier.

22.3 If the Customer breaches clause 22.2 and/or the Hired Goods cannot be collected from the Customer's address notified to the Supplier, by the Supplier, for any reason, then the Customer and its Directors will be liable to the Supplier and must indemnify the Supplier, for:

- a) the full cost of replacing the Hired Goods with equipment, as determined by the Supplier in its sole and absolute discretion; and/or
- b) any lost revenue or any other costs whatsoever arising from or in connection with the breach of clause 22.2 by the Customer.

22.4 The Customer remains responsible and liable to the Supplier irrespective of any subhire agreement or arrangement entered into by the Customer.

22.5 The Customer is liable to the Supplier for the acts and omissions of any sub-hirer and the employees, agents, contractors and officers of the sub-hirer as if they were acts or omissions of the Customer.

22.6 The Customer agrees that before accepting the Hired Goods it has satisfied itself as to the suitability, condition and fitness for purpose of the Hired Goods without relying upon the skills or judgment of the Supplier or any person purporting to act on its behalf. The Customer acknowledges that, to the extent permitted by law, the Supplier has not made any representation or warranty (other than as expressly set out in writing) as to the suitability, condition and fitness for purpose of the Hired Goods or any other matter. The Customer agrees that it accepts delivery of the Hired Goods in an "as is" condition unless it indicates otherwise at the time of delivery.

22.7 The Customer warrants that at all times it will:

- a) operate the Hired Goods safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- b) ensure persons operating or erecting the Hired Goods are suitably instructed, trained and qualified in its safe and proper use and comply with all relevant laws relating to the use of the Hired Goods;
- c) hold all licences, permits and approvals necessary to hire and use the Hired Goods and that no restriction of any kind prevents the Customer from entering into an agreement or arrangement for the hire of the Hired Goods;
- d) display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Hired Goods;
- e) ensure all persons operating the Hired Goods wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer of the Hired Goods or the Supplier;
- f) ensure that no persons operating the Hired Goods are under the influence of drugs or alcohol;
- g) conduct a job safety analysis prior to using the Hired Goods at a site and undertake all necessary searches and checks to the site on which the Hired Goods will be used, including any "dial before you dig" search, even if the Hired

Goods are to be operated or used by the Labour Hire.

h) insure the Hired Goods during the Hire Period (if not electing the Limited Liability Cover);

i) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Hired Goods; and

j) comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Hired Goods.

22.8 The Customer must:

a) clean, fuel, lubricate and maintain the Hired Goods in good condition and in accordance with the manufacturer's and the Supplier's instructions at the Customer's cost;

b) not in any way alter, modify, tamper with, damage or repair the Hired Goods without the Supplier's written consent;

c) provide access to the Supplier to maintain and service the Hired Goods and undertake statutory inspections when necessary during normal business hours, failing which additional charges for out of hours service and maintenance may apply; and

d) return the Hired Goods to the Supplier in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excepted

22.9 The Customer must ensure that during the Hire Period the Hired Goods is/are:

a) stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Hired Goods (i.e. corrosion, sea-salt and flooding);

b) not exposed to any hazardous substance including asbestos without prior written consent; and

c) not altered, defaced, removed or any notices, safety information, identifying mark, plate or number on the Hired Goods is removed;

22.10 The Customer must advise the Supplier of any risks of hazardous substance contamination to the Hired Goods as soon it becomes apparent (or should have become apparent). The Customer will:

a) provide to the Supplier its asbestos register upon request; and

b) decontaminate the Hired Goods and provide to the Supplier details of the process applied.

22.11 If the Hired Goods has not been properly decontaminated (or not capable of being decontaminated) the Customer may be charged for new Hired Goods.

22.12 The Customer consents to the Supplier inspecting, repairing and/or removing the Hired Goods from time to time without prior notice during the Hire Period. In addition, the Customer may arrange a joint inspection with the Supplier.

22.13 The Customer must ensure the safe loading, securing and transporting of all Hired Goods in accordance with all laws, industry guidelines and manufacturer's guidelines. The Customer must, and must ensure that any transporting contractor will, observe any safety directions advised by the Supplier and/or manufacturer of the Hired Goods for its loading and safe handling.

22.14 The Customer:

- a) must not remove the Hired Goods from the Australian State or Territory in which it was hired without the Supplier's prior written consent. If consent is provided, the Hired Goods must be returned to the original the Supplier premises from where the Hired Goods was hired;
- b) agrees to pay any costs associated with the Supplier's attendance if a breakdown occurs at a Long Distance Location; or
- c) must not use the Hired Goods off-shore, underground or in a mine without consent of the Supplier.

22.15 The Customer is responsible for arranging at its cost the re-testing and re-tagging of any electrical and fire extinguisher and/or suppression units and equipment comprising the Hired Goods by the manufacturer's agent in accordance with the manufacturer's instructions, relevant law, applicable Australian Standards and regulatory authority requirements. The Supplier is able to arrange, at the Customer's cost, for such re-testing and re-tagging of the electrical equipment comprising the Hired Goods. Any damage caused to the Hired Goods resulting from incorrect testing will be at the Customer's cost.

22.16 The Customer is responsible for ensuring any Hired Goods is returned to the Supplier with a full tank of fuel, failing which the Customer acknowledges that additional charges will apply to the Hire Charges for fuel.

22.17 The Customer agrees to pay the cost of fuels and consumables in relation to the Hired Goods provided by the Supplier and that are not returned to the Supplier by the Customer.

22.18 The Customer must ensure that a check of all levels, fuelling, greasing, oiling and proper servicing of all Hired Goods is carried out on a daily basis.

22.19 The Customer is responsible for the cost of repairing or replacing flat or damaged tyres and for all wear and tear and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which the Supplier considers are adverse or abnormal. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension.

23. EQUIPMENT BREAKDOWN

23.1 In the event that the Hired Goods breaks down or becomes unsafe, the Customer must:

- a) immediately stop using the Hired Goods and notify the Supplier;
- b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Hired Goods;
- c) take all steps necessary to prevent any further damage to the Hired Goods; and
- d) not repair or attempt to repair the Hired Goods without the Supplier's prior written consent.

23.2 In the event that the Hired Goods breaks down or becomes unsafe to use (through no act or omission of the Customer including misuse, recklessness and negligence), the Supplier will:

- a) repair the Hired Goods or provide suitable substitute Hired Goods when

reasonably possible after being notified by the Customer;

b) not impose a hire charge for that portion of the Hire Period the Equipment could not be used, nor charge the costs associated with any repair or replacement of the Hired Goods; and

c) not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of Hired Goods, however caused, including as a result of the Supplier requiring time to assess, repair and/or replace the Hired Goods.

24. LOST, STOLEN OR DAMAGED HIRED GOODS

24.1 The Customer is responsible for the Hired Goods and any accessory and tools during the Hire Period. If the Hired Goods is lost, stolen or damaged during the Hire Period or becomes unsafe to use due to any act or omission of the Customer, the Customer is liable to the Supplier for and must indemnify the Supplier for:

c) the full cost of either:

1) repairing the Hired Goods; or

2) replacing the Hired Goods with new equipment, as determined by the Supplier in its sole and absolute discretion; and

d) any other costs whatsoever arising from or in connection with the loss, theft or damage to the Hired Goods; and

e) any lost revenue to the Supplier arising from or in connection with the loss, theft or damage to the Hired Goods.

24.2 If, the Customer has paid the Limited Liability Cover fee, the Customer's liability is limited as provided in clause 25 below.

25. LIMITED LIABILITY COVER

25.1 The Customer must pay a Limited Liability Cover fee or obtain insurance covering the full replacement value of the Hired Goods.

25.2 Subject to clause 25.4, where the Customer elects to pay the Limited Liability Cover fee, Supplier agrees to limit the Customer's liability for loss, theft or damage to the Hired Goods during the Hire Period if:

a) the Customer submits to Supplier within 5 Business Days:

1) a written Police report of the loss or damage to the Hired Goods (unless Supplier provides written confirmation that such report is not required); and

2) any other written or photographic evidence requested by Supplier (which may include sworn statements and statutory declarations); and

b) the Customer pays to Supplier the Limited Liability Cover fee which is the greater of:

1) \$500 per item of Hired Goods (or the actual cost of replacement or repair if less than \$500); or

2) the amount equal to 15% of the cost of the repairs (if the Hired Goods can be repaired); or

3) the amount equal to 15% of the new replacement cost of the Hired Goods (if the Hired Goods is lost, stolen or damaged beyond repair).

25.3 The Limited Liability Cover fee will be automatically added to the Hire Charges and will appear on the invoice issued to the Customer as "limited liability".

25.4 Even if the Customer pays the Limited Liability Cover fee the Customer is liable for and indemnifies Supplier for all loss and damage to the Hired Goods if:

a) the Customer has elected not to pay the Supplier the Limited Liability Cover fee in accordance with 25.2 (b) and thereby the Customer has accepted liability for the Hired Goods;

b) the Customer was negligent;

c) the Customer has paid the Limited Liability Cover fee after the loss or damage occurred;

d) Supplier reasonably believes that the Customer failed to take reasonable precautions to protect, lockup and secure the Hired Goods;

e) the Hired Goods is, or is ordinarily, used off-shore, over water or in underground mines or is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;

f) the loss or damage is:

1) to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts or other inherent in the use of the Hired Goods;

2) glass, including breakage;

3) caused by vandalism, including graffiti on the Hired Goods;

4) to Hired Goods' paintwork; and/or

5) due to wrongful conversion of the Hired Goods or any components of the Hired Goods;

g) the loss or damage was caused, or contributed to, by:

1) a breach of the Agreement;

2) an act or omission of the Customer;

3) the use of the Hired Goods in violation of any relevant laws or regulations or contrary to Supplier's or the manufacturer's instructions;

4) a lack of, or faulty lubrication or general servicing of the Hired Goods;

5) the misuse, abuse, the overloading of or incorrect loading of the Hired Goods or any of its components;

6) the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;

7) an exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.; and

8) the transport of the Hired Goods, except where transported by Supplier.

This sub-clause will not apply to Motor Vehicles, trailers or trailerised Hired Goods.

26. INSURANCE

26.1 If the Customer does not want to pay the Limited Liability Cover fee, it must take out

and maintain a policy of insurance that covers loss or damage to the Hired Goods during the Hire Period for not less than the full new replacement cost of the Hired Goods ("Hired Goods Insurance").

26.2 Documents evidencing the Hired Goods Insurance (copy of the certificate of currency for the policy) must be provided to the Supplier prior to hiring Hired Goods.

26.3 Evidence in the form of a certificate of currency for the policy of any renewal or change of insurance must be given to the Supplier at its request and in any event no later than 7 days after the expiry date of the previous Certificate of Currency (where applicable).

26.4 If required by the Supplier, the Customer must also take out and maintain, for the duration of the Hire Period, insurance for Hired Goods which will be used off-shore, over water or in underground mines. Such insurance cover must:

- a) Include the Supplier as an insured so that the Supplier is deemed a separate insured under the policy. Any non-disclosure or misrepresentation by one insured must not prejudice the right of the other insured to claim under any insurance policy.
- b) cover the Supplier's liability as a principal in connection with the performance of the Agreement; and
- c) contain provisions where all rights of subrogation or action against any of the persons comprising the insured are waived.

27. RECOVERY OF HIRED GOODS

27.1 If the Supplier has terminated the Agreement with the Customer, the Supplier may take all steps necessary (including legal action) to recover the Hired Goods, including:

- a) entering any site occupied by the Customer without prior notice to the Customer;
- b) may recover and resell the Hired Goods;
- c) if the Hired Goods cannot be distinguished from similar goods which the Customer has or claims to have paid for in full, the Supplier may in its absolute discretion seize all goods matching the description of the Hired Goods and hold same for a reasonable period so that the respective claims of the Supplier and the Customer may be ascertained. The Supplier must promptly return to the Customer any goods that are the property of the Customer and the Supplier is in no way liable or responsible for any loss or damage to those goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of any of the goods.

SECTION D – ALL CUSTOMERS

28. ACKNOWLEDGMENT

28.1 Each of the Customer and the Directors hereby acknowledge, affirm and agree that:

- a) this application has been provided to the Supplier to enable each of the Customer and the Directors to take it away and read it so that they may fully understand and comprehend the terms conditions and provisions contained

herein;

b) had an opportunity to and sought independent legal advice before entering into this Agreement;

c) the nature of the Agreement;

d) the liability which the Customer would incur by entering the Agreement;

e) the manner in which such liability could be enforced;

f) they have read, fully understand and comprehend the terms, conditions and provisions contained in this application;

g) they have been advised by the Supplier prior to the execution of this application that a copy of this application form containing the forms of this application has been provided to the Customer and each Director to enable them to obtain independent legal advice and they have taken such advice as to us has seemed appropriate;

h) they have full power and authority to enter into this agreement;

i) this agreement is signed and delivered as a Deed; and

j) All information given to the Supplier by the Customer and the Directors is true and correct and will be relied upon by the Supplier.

28.2 The Supplier can rely upon the number of employees recorded on page 1 of this document as a defence to any claim and/or review by the Customer and/or its Director/s of the Agreement and these Terms following the commencement of the *Treasury Legislation Amendments (Small Business and Unfair Contracts Terms) Act 2015*.

29. PRIVACY

29.1 Each of the undersigned Customer and/or Directors of the Customer acknowledge that the information provided in this application is the basis for valuation by the Supplier of the financial standing and credit worthiness of the Customer and each of them and do hereby:

a) confirm that the information provided in this application is true and correct;

b) authorise the Supplier to make such enquiries and receive such information (including personal information and/or sensitive information) from the bankers and business referees mentioned in the application and otherwise from anyone as the Supplier may consider necessary;

c) acknowledge that the Supplier has informed us, in accordance with the Privacy Act 1988, that certain items of personal information and/or sensitive information, including an opinion, about us are permitted to be kept on a credit information file and might be disclosed to third parties including credit reporting agencies;

d) in accordance with the Privacy Act 1988:

(1) agree to the Supplier obtaining from a business which provides information (including personal information and/or sensitive information) about the commercial credit worthiness of persons, information concerning our commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application;

(2) authorise the Supplier to exercise our rights of access to our credit

information files and credit reports;

(3) agree that the Supplier may give to and seek from any credit providers (whether or not named in this application) reports and information that have any bearing on our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:

- i. to assess an application by us for credit or commercial credit;
- ii. to notify other credit providers of a default by us;
- iii. to exchange information with other credit providers as to the status of our account where we are in default with the Supplier or other credit provider;
- iv. to assess our credit worthiness, credit standing or credit history at any time; and/or
- v. to assess whether to continue supply credit to the Customer.

e) agree that the Supplier may seek, from a credit reporting agency, a credit report containing personal information and/or sensitive information about us to assess whether to accept us as guarantors for credit applied for, or provided to, the Customer;

f) agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from the Supplier; and/or

g) are aware that we are generally entitled to access personal information and/or sensitive information that the Supplier's holds about us is except where access can or must be denied or limited by the Privacy Act 1988.

The Supplier is committed to the protection of the Customer's privacy, and its policies, process and systems have been developed with this intent. However, sometimes human error and/or clerical errors may occur. If the Customer thinks that the Supplier has made an error, the Customer should put the request to the Supplier in writing.

DIRECTOR, SECRETARY OR AUTHORISED REPRESENTATIVE SIGNATURE/S

Director/ Secretary/ Authorised Representative

(Print Name)

Director/ Secretary/ Authorised Representative

(Signature)

/ /20

Director/ Secretary/ Authorised Representative

(Print Name)

Director/ Secretary/ Authorised Representative

(Signature)

/ /20

The above signatory warrants that he/she is a director/ secretary or a person authorised to execute this application on behalf of the Customer and/or the

Customer's directors/secretary and the Customer has authorised execution of this application.

SECTION E – GUARANTEE & INDEMNITY

THIS GUARANTEE AND INDEMNITY is given by the Guarantor/s in favour of **JTL Holdings Pty Ltd T/As Orange Truck & Ag (ABN 67 159 419 860)**, and includes their successors and assigns (Supplier).

INTRODUCTION

A. The Guarantor/s have asked the Supplier to supply Goods and/or Hired Goods to the Customer and to extend (or continue to extend) credit to the Customer.

B. The Supplier has agreed to the request of the Guarantor/s in consideration of their agreement as follows:

IT IS AGREED:

1. The Guarantor/s guarantee to the Supplier the punctual payment of the monetary liabilities of the Customer (on any account and in any capacity whatsoever and including liabilities in respect of the Goods or Hired Goods) which are now owing, or may from time to time be owing by the Customer to the Supplier (**Amount Owing**). The Guarantor/s acknowledge and agree that the Amount Owing includes any legal and other costs and expenses incurred or to be incurred by the Supplier in seeking payment from the Customer or in enforcing this Guarantee and Indemnity against the Guarantor/s.
2. If there is more than one (1) guarantor, the Guarantors are jointly and severally liable to the Supplier for the Amount Owing.
3. For the purpose of securing payment of the Amount Owing, the Guarantor/s hereby charge in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge a Caveat upon title of the Guarantor/s real property. The Guarantor/s shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register
4. The obligations of the Guarantor/s under this Guarantee and Indemnity are principal obligations and are not affected by:
 - a) any variation which may be agreed by the Supplier and the Customer in respect of the Terms on which the Goods are delivered and/or hire of Hired Goods are provided and paid for;
 - b) any waiver, extension of time or indulgence given by the Supplier to the Customer or a Guarantor;
 - c) any right or claim which the Customer may assert to resist making payment of any part of the Amount Owing;
 - d) any increase in the amount of the Amount Owing;
 - e) any failure or omission by the Supplier to give notice to the Guarantor/s of any default by the Customer; or
 - f) any act, omission, matter or other thing whatsoever.

5. This Guarantee and Indemnity is a continuing obligation of each Guarantor/s for the amount of the Amount Owing which may be owing from time to time and, binds the successors and assigns of the Guarantor/s and will not be affected by:

- a) the death, incapacity, bankruptcy, of a Guarantor or the Customer; or
- b) a Guarantor or the Customer which is a company becoming an externally administered company pursuant to the *Corporations Act 2001*(Cth).

6. If the obligation of any Guarantor in respect of any part of the Amount Owing is unenforceable, the Guarantor's obligations in respect of the balance of the Amount Owing will not be affected by such unenforceability.

7. If any payment or other transaction relating to or affecting the Amount Owing is:

- a) void, voidable or unenforceable in part or in whole; or
- b) is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part; the liability of each of the Guarantor/s is the same as if:
- c) that payment or transaction (or the void, voidable or unenforceable part of it); and
- d) any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above.

has not been made and the Guarantor/s must immediately take all action and sign all documents necessary or required by the Supplier to pay to or restore to the Supplier the Amount Owing in full.

8. If all or any of the Amount Owing is:

- a) not recoverable from the Customer; or
 - b) not recoverable from a Guarantor under this Guarantee and Indemnity;
- each of the Guarantor/s, as a separate and principal obligation, indemnifies the Supplier against any loss, liability, expense or outgoing suffered, paid or incurred by the Supplier in relation to such amounts and must pay the Supplier an amount equal to such amounts.

9. For the avoidance of doubt it is expressly acknowledged by the Guarantor/s that the Guarantor/s' obligations extend to and may include Amount Owing and other obligations of the Customer which have arisen before or after the date of this Guarantee.

ACKNOWLEDGMENT

10. Each of the Guarantor/s hereby acknowledge, affirm and agree that he/she:

- a) had an opportunity to and sought independent legal advice before entering into the Guarantee and Indemnity;
- b) the nature of the Guarantee and Indemnity;
- c) the liability which the Guarantor would incur by executing the Guarantee and Indemnity; and
- d) the manner in which such liability could be enforced.

ASSIGNMENT AND NOVATION

11. The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these this Guarantee by notice in writing to the

Guarantor/s. The Guarantor/s agrees that any order for Goods and/or Hired Goods submitted by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

LAWS TO GOVERN PROVISIONS OF THE GUARANTEE AND INDEMNITY

This Guarantee and Indemnity shall be governed by and construed in accordance with the laws of New South Wales.

Guarantor

(Print Name)

Guarantor

(Signature)

/ /20

Witness

(Print Name)

Witness

(Signature)

/ /20

Guarantor

(Print Name)

Guarantor

(Signature)

/ /20

Witness

(Print Name)

Witness

(Signature)

/ /20

SECTION F – CREDIT CARD AUTHORISATION

The Customer hereby authorises the Supplier to process payment against any or all monies due and payable in accordance with clause 5.2 of this Agreement:

CREDIT CARD DETAILS:

TYPE (circle): AMEX, MASTERCARD, VISA, DINERS

Card Number: _____

Expiry Date: ____/____ CVC: _____

I understand that all AMEX and Diners cards will incur a 3% surcharge applied to all payments.

Cardholder's Name

(Print Name) _____

Cardholder's Signature

(Signature) _____

/ /20

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Initial _____

**JTL HOLDINGS PTY LTD T/AS ORANGE
TRUCK & AG**

ABN 67 159 419 860

Tel: 02 6360 1602

Email: sales@orangetrucksales.com.au

Web: www.orangetrucksales.com.au

Address: 73 Elsham Avenue Orange NSW
2800

OFFICE USE ONLY

Representative Initial Credit Limit

Distribution Centre Credit Check

Delivery Zone Credit Reference

Approved Payment Terms

Date Approved

Signature

Orange Truck & Ag A/C #

Opened by Opened by

Opened date Opened date

Sales Rep Code Sales Rep Code