

General T&Cs

It is agreed:

1. Application of T&Cs

These Standard Terms apply to the supply of any Goods, Construction Services, Equipment Hire or Labour Hire arrangements on the basis that the General T&Cs apply to all dealings with the Customer, the Goods T&Cs apply to the provision of any Goods, the Construction T&Cs apply to any Construction Services and the Hire T&Cs apply to any Equipment Hire or Labour Hire.

2. Interpretation

2.1 Definitions

Unless the context otherwise requires, in these Standard Terms, including any Schedule and any other document forming part of the Agreement the following terms are defined:

- (a) **Additional Charge** means any fees or charges for additional Products provided, performed or arranged by Hawkins at the Customer's request or reasonably required as a result of the Customer's conduct, including any items that are excluded from the Quote that Hawkins provides, performs or arranges at the Customer's request;
- (b) **Business Day** a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane (or such other location where the Products are to be supplied or performed) or a day falling on or between 24 December and 31 December;
- (c) **Construction Services** means the relevant construction, refurbishment or related services (including the provision of any ancillary or related materials included as part of any construction related services) that Hawkins provides or procures for the Customer, as specified in the Quote, but excludes any Hire Services;
- (d) **Construction T&Cs** means the terms, conditions and other provisions applicable to Construction Services as provided for in this Agreement, including any provisions under the heading 'Construction T&Cs' and the General T&Cs
- (e) **Customer** means the person that orders Products from Hawkins from time to time, including any persons named as the 'Customer', 'client' or similar expression in a corresponding Quote and, where the context permits, the officers, employees and agents of the foregoing;
- (f) **Customer Supplied Items** includes reasonable access to the Site (as well as any location where the Products are to be delivered or provided), safe working facilities reasonably necessary for the provision of any Products in light of the nature of Products, accommodation for staff provided under labour hire arrangements and such other items or matters specified as such in the Quote;
- (g) **Defects** includes any part of the Products that is defective, incomplete or not otherwise carried out in accordance with this Agreement;
- (h) **Deliverables** means the relevant documents, drawings, plans or other material that are required to be supplied to the Customer as part of any Construction Services as specified in the Quote;
- (i) **Equipment** means each of the items the subject of the Equipment Hire as specified in the Quote, including any tools, tyres, accessories and parts supplied to the Customer and any attachments and any replacements of those items;
- (j) **Equipment Hire** means the provision of the Equipment on a hire basis to the Customer in accordance with the Quote and the remaining provisions of this Agreement;
- (k) **Fees** means the fees, prices and charges payable by the Customer to Hawkins in respect of the Products and this Agreement, including those set out in the Quote and the Scope of Works or as otherwise provided for in this Agreement;
- (l) **Goods** means the relevant physical products or goods that the Quote provides for Hawkins to sell to the Customer independently of any Construction Services (and excludes any Equipment the subject of Equipment Hire);
- (m) **Goods T&Cs** means the terms, conditions and other provisions applicable to Goods as provided for in this Agreement, including any provisions under the heading 'Goods T&Cs' and the General T&Cs;
- (n) **Labour Hire** means the provision of staff or personnel by or on behalf of Hawkins to the Customer (**Labour**) on a labour hire basis, as specified in the Quote;
- (o) **Hawkins** means Hawkins Group Pty Ltd ABN 87 055 074 470 QBCC 57745 and, where the context permits includes a reference to its related bodies corporate (including Hawkins Group CQ Pty Ltd ABN 78 668 018 915 QBCC 15395111) and their respective officers, employees and agents;
- (p) **Hawkins Policies** each of Hawkins' published or otherwise disclosed policies in effect from time to time, including its privacy policy and privacy statements, its website terms of use, any of Hawkins' terms applicable to online portals or other electronic facilities and any of Hawkins' other policies referred to in any of such documents or these Standard Terms;

- (q) **Hire Services** means the provision of Equipment under Equipment Hire and/or Labour under Labour Hire, any Materials by Hawkins to the Customer on a hire, bailment or similar basis, which may be accompanied by other Services;
- (r) **Hire T&Cs** means the terms, conditions and other provisions applicable to the Hire Services as provided for in this Agreement, including any provision under the heading 'Hire T&Cs' and the General T&Cs;
- (s) **Milestones** means any part of the Construction Services, including any Deliverables that are specified in the Quote;
- (t) **Products** means the relevant Goods, Services or Hire Services (as the case may be) provided by (or on behalf of) Hawkins to (or for the benefit of) the Customer pursuant to this Agreement, as specified in the Quote and any items expressly included in the Scope of Works;
- (u) **Quote** means the relevant quote or proposal provided by Hawkins to the Customer for the relevant Products and where a quote or proposal is subsequently amended, refers to the final amended quote or proposal that is accepted by Hawkins in accordance with these Standard Terms;
- (v) **Scope of Works** means the scope of works or schedule or rates (if any) specifically referred to in the Quote that sets out the scope of the relevant Products to be provided by Hawkins and any further rates or charges that apply;
- (w) **Site** means the location specified in the Quote where the relevant Products are to be delivered or performed;
- (x) **Specifications** means the specifications in respect of the relevant Product, specified as such in the Quote;
- (y) **Standard Terms** means the provisions contained in this document, as amended from time to time;
- (z) **Start Date** means the date specified as such in the Quote or such earlier date that Hawkins commences providing the Products or mobilises to the Site (if applicable);
- (aa) **Substantial Completion** occurs when the relevant Construction Services (or in respect of a Milestone, the relevant parts of the Construction Services) are complete and delivered to the Customer, apart from minor defects which do not prevent or unreasonably interfere with the Construction Services from being capable of being used for their stated or intended purpose; and
- (bb) **Website** means Hawkins' website, located at www.hawkinsgroup.com.au and (where the context permits) such other of Hawkins' websites from time to time.

2.2 Documents comprising the Agreement

The 'Agreement' comprises these Standard Terms and the relevant Quote. Unless the relevant document forming part of this Agreement expressly states otherwise and refers to this clause, these Standard Terms will prevail over any other documents referred to in this Agreement in the event of an inconsistency.

2.3 When Customer bound

These Standard Terms apply to all transactions between the Customer and Hawkins relating to the provision of Products (including all quotations, contracts and variations) and the Customer will be bound by these Standard Terms from the time it first signs a document forming part of the Agreement, from when the Customer first accepts any Quote or when the Customer requests the supply of any Products after being notified of these Standard Terms (whichever is the earlier).

3. Quotes and scope of Products

3.1 Quotes

- (a) Hawkins may prepare and submit a Quote that includes details of the Products (including any proposed Deliverables), the Fees (which may be an estimate or rate) and any related matters for consideration and approval by the Customer. The Customer may confirm acceptance of a Quote by signing the Quote or by any other means (including confirming via email or verbally that the Quote is accepted). Where the Customer does not return a signed Quote to Hawkins but provides Hawkins with instructions to proceed with the provision of the Products this will be taken as the Customer having accepted the Quote and these Standard Terms.
- (b) Any acceptance by the Customer of a Quote is irrevocable and the Quote may only be varied by the Customer with Hawkins' written consent. A Quote is only binding on Hawkins if the Customer has accepted the Quote and Hawkins confirms that the Quote is accepted in writing (at which point a contract is formed for the supply of the relevant Products on the terms of this Agreement). For the avoidance of doubt, until such time as a Quote is accepted by the parties Hawkins will have no obligations to (and the Customer will have no rights in respect) the Quote.
- (c) Where a Quote has been accepted and is cancelled by the Customer, the Customer indemnifies Hawkins against all Liability incurred by Hawkins as a result of the cancellation, including any loss of profit from other sales foregone as a result of the scheduling of the sale which is subsequently cancelled.

3.2 Provision of Products

- (a) As consideration for the Customer duly and punctually complying with its obligations to Hawkins (including paying all Fees when due), Hawkins will provide the Products expressly included in the scope stated in the Quote in accordance with this Agreement. For the avoidance of doubt, where the Quote indicates that any Products are additional or optional, then Hawkins is not obliged to provide those items pursuant to the Quote

(rather Hawkins will issue a separate Quote for such items on request or the Customer will be separately charged for those as an Additional Charge).

- (b) Hawkins will use best endeavours to meet any delivery timeframes or Milestones set out in the Quote. However, any indication from Hawkins of the time frame for the supply and completion of the Products is an estimate only and is based upon the Customer duly and punctually complying with its obligations under this Agreement (including providing all Customer Supplied Items and adhering to any timetable in the Quote). Where the Customer does not comply with its obligations then Hawkins will have no Liability for the time frame not being met and will be entitled to recover any increased costs, loss of time or other Liability as an Additional Charge.

4. Fees, invoicing and payment

4.1 Calculation of Fees

- (a) The Fees for the Products will be set out in the final Quote. The Fees stated in any Quote are only in respect of the specific Products stated in the Quote and are based on the delivery timetable described in the Quote (if any), and do not include any fees or Additional Charges that Hawkins is entitled to in respect of any other products services (including any matters that are expressly excluded from the Products or the Fees stated in the Quote).
- (b) Where the Fees are stated in the Quote to be calculated based on:
 - (i) a schedule of rates or similar methodology (including any schedule or list of any item of work or Products), then the Fees will be the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates or Scope of Works;
 - (ii) a lump sum amount, then the Fees will be that lump sum amount,
 - (iii) a lump sum and rates, the aggregate of the sums in paragraphs (i) and (ii),

subject to any variation provided for in this Agreement (including any agreed mark-up provided for in the Quote that is applicable to any schedules of rates).

- (c) Unless the Quote indicates otherwise, where any Quote sets out a schedule of rates that refers to a:
 - (i) a 'monthly fee/rate', 'per month' or similar, that Fee is payable for the relevant Equipment, Labour or other item for each month during the Hire Period (in the case of Hire Services) or the period over which the Construction Services are provided (in respect of Construction Services);
 - (ii) a daily fee/rate', 'per day' or similar, that Fee is payable for the relevant Equipment, Labour or other item for each day during the Hire Period where the Equipment, Labour or item is available for use (in the case of Hire Services) or on each day during which the Construction Services are provided;
 - (iii) a 'per hour fee/rate' or similar, that Fee is payable for the relevant Equipment, Labour or other item for a minimum of 12 hours per day for each day during the Hire Period where the Equipment or Labour is available for use (in the case of Hire Services) or on each day during which the Construction Services are provided, plus that sum for each additional hour that the Equipment or Labour is actually utilised.
- (d) In respect of any Construction Services or Labour Hire Services, those services will be provided during 'normal working hours' as defined by Hawkins (in its sole discretion), unless the Quote expressly states otherwise. If the Customer requests Hawkins to provide services (or utilises any Labour the subject of Labour Hire Services) outside of those hours, then Hawkins will be entitled to charge the Customer an Additional Charge.
- (e) If the Customer requests any changes to the Products, Scope of Works, Specifications or any other matters specified in the Quote (including the time required for delivery of or performance of Construction Services or the location at which they are to be provided), it must do so in writing and Hawkins reserves the right to vary the Fees. Following any changes to the Scope of Works, the Products, the Fees or other matters provided for in a Quote (whether at the Customer's request or as reasonably required by Hawkins due to the Customer's breach of this Agreement, latent conditions at or around the Site or otherwise), Hawkins may prepare any variations to the Quote, the Fees, the Products or the Scope of Works. If this occurs, the Customer must promptly confirm in writing that it accepts or rejects the variations proposed by Hawkins and Hawkins is under no obligation to accept or fulfill the Quote until the Customer does so. Any changes will not be binding on Hawkins unless and until Hawkins has approved the changes in writing. If the Customer instructs Hawkins to provide additional Products beyond those stated as being included in the Quote, then the Customer must pay Hawkins an Additional Charge for same.

4.2 Invoicing and payment

- (a) The Customer will pay Hawkins the Fees (and any Additional Charges and any deposit or up-front payment) at the times specified in the Quote (and if no such time is specified, then on demand). The Quote may (but need not) specify one or more of the following payment arrangements:
 - (i) '**Progress Claims**' where Hawkins will raise invoices for the Products which have been supplied (including any Construction Works that have been performed or any Equipment or Labour the subject of Hire Services has been provided) up to and including the last day of month of each period specified in the Quote (and if no period is specified, then monthly);

- (ii) **'Milestones'** where Hawkins will be paid the relevant portion of the Fee upon the relevant Milestones achieving Substantial Completion; or
 - (iii) **'On Completion'** where Hawkins will be entitled to payment of the Fee upon Hawkins achieving Substantial Completion of the relevant Construction Services or other Products the subject of that payment condition in the Quote.
- (b) Hawkins may issue an invoice (including a pro forma invoice) to the Customer at any time when monies are payable to Hawkins pursuant to this Agreement. In respect of any Construction Services and where the Act applies, Hawkins will issue a payment claim in accordance with the *Building Industry Fairness (Security of Payment) Act 2018* (Qld). The amount payable by the Customer will be the amount set out in the invoice, consisting of the Fees, any Additional Charges and other sums payable pursuant to this Agreement.
 - (c) Unless the Quote specifies otherwise, the Customer must pay any invoice issued by Hawkins immediately upon receipt. Hawkins is under no obligation to supply or deliver any Products when any invoice or other monies has not been paid when due.
 - (d) Where the Quote provides for Hawkins to offer the Customer credit terms (such as allowing payment within 30 days of the date of an invoice), payment must be made strictly in accordance with those credit terms and Hawkins may revoke the credit terms if the Customer breaches any obligations owed to Hawkins.
 - (e) If the Customer (acting reasonably) disputes an invoice issued by Hawkins, then the Customer must provide full details of the dispute (including any supporting evidence) and pay the non-disputed portion of the invoice within the relevant timeframe for payment (with the disputed portion to be paid on resolution of the dispute). The parties will use best endeavours to resolve any dispute over the invoice. Nothing in this paragraph relieves the Customer from an obligation to pay an invoice that is due and payable in accordance with this Agreement.
 - (f) The Customer will pay Hawkins on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to Hawkins, calculated on daily balances and compounding monthly until paid. Interest is payable at the end of the month in which the interest accrued and earlier on demand. The Customer must also pay all costs and expenses, and indemnify Hawkins against any Liabilities incurred by Hawkins, associated with collecting any overdue amounts or enforcing Hawkins' rights.

4.3 Additional Charges

Where this Agreement entitles Hawkins to impose any Additional Charges (including where the Products are varied at the Customer's request, due to the Customer's breach of this Agreement or otherwise), the amount of the Additional Charge will be calculated by Hawkins by reference to the following:

- (a) where the sum of the Additional Charge is included in an accepted Quote, Scope of Works or invoice (including a pro forma invoice) that is not later varied in accordance with these Standard Terms, the sum specified in the Quote, Scope of Works or invoice (as the case may be);
- (b) where the Additional Charge relates to further Products provided (including additional construction materials, variations to the Scope of Work or Products), the sum reasonably determined by Hawkins to reflect its then current prices, charges and rates for the relevant item provided (and if no such prices, charges or rates are applicable then a reasonable estimation by Hawkins of what they would be);
- (c) in all other cases, the sum reasonably determined by Hawkins that represents its full costs, expenses and other Liabilities incurred in connection with the matter giving rise to the Additional Charge (including staff time based on Hawkins' current rate card) plus a mark-up of 20% (unless another mark-up is specified in the Quote).

4.4 Deposit

- (a) If the Quote provides for any deposit or upfront amount to be paid to Hawkins (together any **Deposit**), The Deposit (if any) will be paid by the Customer to Hawkins on or prior to the Start Date (or such earlier date specified in the Quote) as security for the Customer's obligation to pay the Fees.
- (b) Hawkins is entitled to apply the Deposit against any monies owing to Hawkins by the Customer from time to time, and where Hawkins does so it may by notice in writing to the Customer require that any shortfall in the amount of the Deposit be promptly paid to Hawkins.
- (c) Any monies paid on account of the Deposit, which have not been applied against the monies owing to Hawkins and are still held by Hawkins at the time all monies owing by the Customer under this Agreement are paid in full, will be promptly refunded to the Customer following Hawkins receipt of all such monies.

4.5 GST

Unless Hawkins otherwise agrees in the Quote, any Fees (or any amounts quoted or prices payable) for any supply to be made by Hawkins exclude any GST, taxes, duties (such as import duties), excise fees, tariffs or other government or mandatory charges that are payable in respect of the supply of the Products or any currency conversion, banking or similar fees in respect of any payments to Hawkins, which the Customer must pay at the same time as any consideration for a supply is payable (or otherwise on demand by Hawkins). Hawkins will issue a tax invoice for any GST it is to recover from the Customer pursuant to this Agreement.

5. Goods T&Cs

5.1 Application of Goods T&Cs

This clause 5 (in addition to any other Goods T&Cs and the General T&Cs) will apply in respect of any sale of Goods by Hawkins to the Customer. For the avoidance of doubt, this clause 5 does not apply where only Construction Services or Hire Services are being provided by Hawkins.

5.2 Scope of Goods

The Goods to be sold by Hawkins to the Customer will be set out in the Quote. Where the Quote contains provisional amounts or conditional fees, then those amounts or fees will be payable where indicated in the Quote and this Agreement.

6. Hire T&Cs

6.1 Application of Hire T&Cs

This clause 6 (in addition to any other Hire T&Cs and the General T&Cs) will apply in respect of the provision of any Hire Services (including Equipment Hire or Labour Hire). For the avoidance of doubt, this clause 6 does not apply where only Goods are being sold by Hawkins or where Construction Services are provided by Hawkins without any Hire Services.

6.2 Definitions

For the purposes of this clause 6, the following definitions will apply:

- (a) **Condition Report** means a report on the general condition of Equipment, which may include its state of wear and tear, the state of any Defined Wear Items, cleanliness, and the readings on its measurement equipment;
- (b) **Defined Wear Items** means tyres, tracks, wheels, and any other parts or accessories of a nature that are similarly susceptible to wear or are otherwise specified as 'Defined Wear Items' in the Quote or the on-hire Condition Report;
- (c) **Expected End Date** means the estimated last date of the Hire Period as stated in the Quote, which may be a fixed date or may be determined by reference to the 'Hire Duration' stated in the Quote (which is to commence on the Start Date);
- (d) **Fair Wear and Tear** means minor damage or degradation to the Equipment, which in the reasonable opinion of Hawkins, is in the nature of ordinary fair wear and tear caused by ordinary day-to-day use of the Equipment in compliance with this Agreement, but exclude any damage or degradation to Defined Wear Items or any of the foregoing that is caused or contributed to by the Customer's failure to comply with this Agreement (including any failure repair and maintain the Equipment in accordance with this Agreement); and
- (e) **Hire Period** means the period from the Start Date and continuing until the later of the Expected End Date or such other date specified in this Agreement as being the end of the Hire Period.

6.3 Equipment Hire

In respect of any Equipment Hire:

- (a) the Customer is a mere bailee for the Equipment and nothing in this Agreement passes title in the Equipment to the Customer;
- (b) any replacement parts, accessories or attachments to Equipment are Hawkins' property (including those that are affixed to the Equipment at the end of the Hire Period), unless specified otherwise in writing by Hawkins; and
- (c) the Equipment must at all times remain on the relevant Site specified in the Quote (or if none is specified then the location approved by Hawkins in writing);
- (d) the Equipment must be kept free from any security interest, charge, right or encumbrance in favour of any third party, and the Customer must not do anything or permit anything to be done to adversely affect Hawkins' interest as an owner of the Equipment;
- (e) unless the Quote expressly provides for Hawkins to provide Labour to operate any Equipment, the Customer will provide suitably qualified and trained personnel to operate all Equipment at the Customer's cost.

6.4 Hire Period and delivery/collection of Equipment

- (a) Hawkins will make the Equipment available to the Customer for the Hire Period stated in the Quote (subject to Hawkins' rights to recover the Equipment earlier in accordance with this Agreement). As provide for in the General T&Cs, unless the Fees stated in the Quote expressly include mobilisation or demobilisation costs, the Customer is responsible for all mobilisation or demobilisation of the Equipment (at the Customer's cost).
- (b) The Hire Period may be extended by agreement between the parties in writing. The Customer must comply with its obligations under this Agreement (including to pay the Fees and insuring the Equipment) for any further period that the Equipment is not returned to Hawkins or is at the Customer's risk. For the avoiding of doubt, any extension of the Hire Period or any obligation on the Customer to pay the Fees beyond the Expected End Date or the Hire Period does not entitle the Customer to continue to have possession of the Equipment under any hire arrangement.

- (c) The Hire Period will cease on the later of the date that the Customer returns the Equipment to the Hawkins' nominated premises (or such other location specified for the return of the Equipment in the Quote) or the on the last date of the Hire Period specified in the Quote. Further:
 - (i) if Hawkins is unable to gain access to the Equipment upon or after termination due to the Customer's acts or omissions or those of a third party, the Fees will be payable by the Customer until Hawkins is able to regain possession of the Equipment;
 - (ii) that the Equipment is inoperable or require repairs due to loss or damage caused by the Customer's acts or omissions or breach of this Agreement, the Hire Period will include any further time required to reinstate the Equipment to the condition required under this Agreement up to a maximum of 15 weeks or such earlier date that Hawkins receives reimbursement equal to the price reasonably determined by Hawkins as the price for equivalent Equipment in good working order.
- (d) Despite anything else in this Agreement and unless the 'Hire Period' specified in the Quote expressly states that the Hire Period it is for more than 24 months:
 - (i) the term during which the Customer possess any Equipment (including any extensions or renewals) must not continue beyond the period of 24 months from the time the Customer (or anyone on the Customer's behalf) first took possession of the relevant Equipment, and the Customer must return the Equipment to Hawkins before the end of that period; and
 - (ii) if the Equipment is not returned before the end of that period, then this Agreement (including the obligation to continue to pay the Hire Charge) will continue to apply on the basis that the hiring of Equipment has converted to a weekly rental, but nothing in this paragraph shall be taken to provide that the term of any hire will exceed beyond the period referred to in paragraph (a) above.

6.5 Condition Report

- (a) At the time of supplying the Equipment, at the end of the Hire Period and at such other times agreed or stated in the Proposal, Hawkins may provide a Condition Report to the Customer.
- (b) The Condition Reports will be used for the basis of calculating any back charges that are to be paid by the Customer that represent the degradation of the Equipment and/or the Defined Wear Items. Hawkins may also request that the Customer prepares a Condition Report in such form and within such timeframe as Hawkins may prescribe.
- (c) If any Condition Report is not disputed by the Customer within 48 hours of receipt, it will be conclusive evidence of the matters that it contains. The Customer must obtain the consent of all parties necessary to allow access to the Equipment for the purposes of making a Condition Report.
- (d) In calculating the amount to charge the Customer for any alteration in the condition of the Equipment during the Hire Period, Hawkins will:
 - (i) have reference to any Condition Report made under the preceding clauses; and
 - (ii) in the absence of a Condition Report under the preceding clauses, fairly determine the alteration in the condition of the Equipment. Such determination will be final and beyond challenge by the Customer, to the extent the law permits.
- (e) The Customer will rectify any defects outlined in a Condition Report made during the Hire Period or around the time of the end of the Hire Period (within such reasonable time as Hawkins may specify in writing, or in default of any time being specified then 7 days) or Hawkins will invoice the expected cost of rectifying any defects shown in the interim Condition Report to the Customer plus a mark-up of 20%.
- (f) If the rectification costs that are actually incurred by Hawkins at the conclusion of the Hire Period differ from the amounts invoiced under the preceding clause and paid by the Customer, the Customer shall pay Hawkins on demand any deficiency and Hawkins shall reimburse the Customer for any excess as the case may be.
- (g) If any Condition Report is disputed by the Customer and the parties cannot reach an agreement, then an independent party, nominated by Hawkins, will be appointed to complete a Condition Report, which will be conclusive evidence of the matters that it contains.

6.6 Maintenance, repair and other responsibilities

- (a) Unless the Quote expressly states otherwise, the Customer will be responsible for the following at all times at the Customer's cost:
 - (i) all daily and routine maintenance and service activities specified by Hawkins or the manufacturer of the Equipment or otherwise necessary to ensure the Equipment remain serviceable and in proper working order, including all greasing, oiling and lubrication of the Equipment, cleaning of the Equipment (as well as the disposal of such waste fluids and other consumables) and any further matters provided for in Hawkins' Policies or manuals;

- (ii) all repair, maintenance and servicing or replacement of parts (including as a result of damage to the Equipment) which is not specifically designated as Hawkins' responsibility under the Quote; and
- (b) The Customer must also clean the Equipment thoroughly on completion of the Hire Period and prior to Hawkins performing any servicing on the Equipment or conducting any repairs and pay any fees for labour associated with the Customer's failure to do any of the foregoing.
- (c) Provided the Customer complies with all of the Customer's obligations under this Agreement (including the obligations in the preceding provisions of this clause 6), the Customer will not be liable for Fair Wear and Tear to the Equipment except where this Agreement expressly provides to the contrary. For the avoidance of doubt, the Customer will be responsible for wear and tear in circumstances where the Customer misuse the Equipment or fail to properly maintain it.
- (d) The Customer must use the Customer's best endeavours to comply with any reasonable request of Hawkins to supply workshop facilities and labour at its premises to allow Hawkins to comply with any of its obligations under this Agreement in respect of the Equipment. Hawkins will not be responsible for modifications and attachments to the Equipment that are specific to a particular equipment or machinery unless Hawkins has expressly agreed to do so in writing.
- (e) Hawkins will not be required to comply with its obligations in respect of any repairs or maintenance (despite any indication in the Quote to the contrary), and the Customer will be responsible for all costs of Hawkins obligations therein, where the repairs or any other activity of Hawkins is beyond Fair Wear and Tear or is caused by an accident or breakdown involving the Equipment, the occurrence of a defect in or malfunction of the Equipment and the accident, breakdown, defect or malfunction is the result of the negligent or deliberate misuse or care of the Equipment by anyone other than Hawkins or where the repairs are a result of the Customer failing to comply with the Customer's obligations in this Agreement or as a result of the Customer not promptly notify Hawkins of any potential defects in the Equipment or the expected need to conduct repairs.
- (f) Despite any collection of the Equipment by Hawkins, Hawkins does not warrant or represent that the Equipment is in good working order or that any of the Customer obligations under this Agreement have ceased.

6.7 Labour Hire

In respect of any Labour Hire:

- (a) unless the Quote expressly provides that Hawkins is responsible for supervision and management of Labour, the Customer will be responsible for the supervision and management of any Labour, the Customer must not direct the Labour to do anything that is unlawful or unsafe and the Customer will be responsible for the acts and omissions of such Labour while they are under the Customer's supervision or management;
- (b) Hawkins retains the discretion to supervise and manage such Labour (including due to workplace health and safety and other requirements);
- (c) unless the Quote expressly provides otherwise, the Customer will provide transport where practicable, and a reasonable standard of food, refreshment, accommodation and the other necessities of life for the Labour; and
- (d) in the event of a serious injury or illness, or any other circumstance causing actual or threatened harm to the Labour, the Client any and all available resources in order to treat and care for the personnel, or transport the personnel to a hospital, or to otherwise remove the personnel from the circumstance causing the harm or threat of harm; and
- (e) Hawkins has the discretion to select which personnel will provide the relevant services the subject of the Labour Hire, but will replace any personnel at the Customer's reasonable request on the condition that the Customer pays Hawkins the full costs of such replacement as an Additional Charge (unless the reason for the replacement was due to the personnel complying with Site safety or other requirements).

6.8 Hire Fees

- (a) The Customer acknowledges that the Fees are payable for the full Hire Period. For the avoidance of doubt, the Fees continue to be payable by the Customer where the Equipment or Labour are unable to be utilised under any circumstances, unless such circumstances are caused directly by Hawkins' acts or omissions or where the law requires otherwise.
- (b) Where Hawkins has provided the Equipment or Labour to the Customer under a hire arrangement and termination of this Agreement has occurred prior to the Expected End Date (other than a valid termination by the Customer due to Hawkins' breach), then within 30 days from the date of termination of this Agreement, the Customer agrees to pay Hawkins a sum representing the Fees payable until the Expected End Date discounted to their net present value at the rate of 8% per annum.

7. Construction T&Cs

7.1 Application of Construction T&Cs

This clause 7 (in addition to any other Construction T&Cs and the General T&Cs) will apply in respect of any provision of Construction Services to the Customer. For the avoidance of doubt, this clause 7 does not apply where only Goods and/or Hire Services are being provided by Hawkins.

7.2 Provision of Construction Services

In respect of any Construction Services, the following provisions will apply:

- (a) Hawkins will, at all relevant times, use best endeavours to ensure that Hawkins and its personnel who provide any Construction Services are suitably qualified and experienced to perform the Construction Services for which they are responsible;
- (b) Hawkins will use best endeavours to provide the Construction Services in a professional manner and with all due care and skill and commence the delivery of the Construction Services in accordance with the timeframes set out in the Quote;
- (c) Hawkins will ensure that all Construction Services, use only new materials, unless the Quote or any instructions provide otherwise;
- (d) where Hawkins' personnel provide Construction Services at the Site, Hawkins will use best endeavours to liaise, cooperate and confer with the Customer and its personnel in order to coordinate its Construction Services in a manner to minimise disruption at the Site;
- (e) Hawkins will use its best endeavours to achieve Substantial Completion (and any relevant Milestone) by the date for substantial completion as set out in the construction program provide by Hawkins or otherwise agreed in writing;
- (f) if the Customer requests Hawkins to undertake Construction Services in the nature of investigations, rectification or variation as a result of an alleged defect in any Construction Services but the Service is found not to be defective or the defect was caused due to misuse or other excluded matter, then Hawkins will be entitled to charge the Customer for the Construction Services as an Additional Charge; and
- (g) unless the Quote expressly provides otherwise, Hawkins will not be responsible for the preparation of any designs (including any Design Services) and will not be liable for any Defects or deficiencies in any works completed in accordance with any designs or Specifications prepared or provided by the Customer or any third party (including any non-compliance with any Authorisation, Authority or applicable standards).

7.3 Design Services

- (a) Where the Quote expressly provides for Hawkins to provide any structural and other design services to the Customer in connection with any Construction Services (or proposed Construction Services) (**Design Services**), then the provisions of this clause will apply.
- (b) Hawkins will provide all Deliverables in respect of the Design Services that are set out in the Quote. Hawkins will provide 1 copy of any designs or Deliverables to Customer, unless otherwise set out in a Quote. Hawkins will be entitled to charge the Customer for the supply of any additional copies as an Additional Charge.
- (c) If Hawkins considers that any information, documents, directions, particulars or instructions (including any Specifications) provided by the Customer or a third party in connection with the Design Services to be provided by Hawkins are inadequate, contain errors or ambiguities then Hawkins may give written notice to the Customer seeking clarification (and Additional Charges may result). The Customer will promptly review any designs or Deliverables provided by Hawkins and will promptly notify Hawkins of any changes or requirements to same.
- (d) Where the Customer provides Hawkins with Specifications, suggestions or other details of its requirements in respect of the proposed Design Services or requests Hawkins to provide an estimate of fees for Construction Services based on any designs, the Hawkins may provide the Customer with an estimate of the fees for such Construction Services (**Estimated Fees**). Any such Estimate Fees being an estimate only that may vary based on the Customer's requirements, final finishes or specifications selected, any changes to the proposed designs requested by the Customer, any latent conditions affecting the Site (or its near surrounds) or any matters notified by Hawkins when providing the Design Services. Any Estimated Fees will not be binding on Hawkins, rather Hawkins will provide updated details of the proposed Fees for any Construction Services (including via issuing a revised Quote).
- (e) If at any time after providing the Customer with the Estimated Fees, the Customer requests any changes to the proposed Design Services or Construction Services (including in relation to the materials or Goods to be used, dimensions, the location, functionality or the like), Hawkins may revise the Estimated Fees for consideration and approval by the Customer. Hawkins is under no obligation to continue providing any Products until the Customer approves the revision to the Fees. For the avoidance of doubt, the Customer acknowledges and agrees that any such changes may result in adjustments to the delivery timeframes, Milestones or completion dates, and that Hawkins will have no Liability in relation to same.

7.4 Customer's cooperation

Where Hawkins is to provide Construction Services (including any Design Services):

- (c) the Customer must ensure that Hawkins has access to the Site for any persons, vehicles or machinery reasonably necessary to enable Hawkins to commence and provide the Construction Services (including the provisions of any Products) from the Start Date until the Construction Services are completed and Hawkins has complied with its obligations under this Agreement;

- (d) the Customer must not unreasonably interfere with the performance the Construction Services (including the provision of any Products) and the Customer must take all reasonable steps to prevent any other person (whether authorised or under the control of the Customer) from unreasonably interfering with the performance of the Construction Services;
- (e) if the Site becomes inaccessible for any reason beyond the control of Hawkins, then Hawkins is entitled to charge the Customer for any reasonable costs or expenses it incurs to obtain sufficient access to the Site, including any costs or expenses of its personnel, agents or contractors or Equipment that are unable to work or be utilised in the provision of the Products; and
- (f) the Customer must not give directions to Hawkins employees, agents, contractors or subcontractors.

7.5 Authorisations and third party engagement

- (a) Unless the Quote expressly provides otherwise, the Customer will be responsible for obtaining all authorisations, consents, applications, permits, conditions or approval (including any development approval) or exemption from (together any **Authorisation**), by or with any government, administrative or other body or authority (together any **Authority**) in connection with any Design Services or Construction Services.
- (b) Where the Quote requires Hawkins to obtain any Authorisation, the Customer agrees that Hawkins may be required to engage third parties to assist in obtaining any Authorisations or to satisfy any Authority in respect of any Design Services or Construction Services (such as certification by an engineer), and unless any costs, fees or expenses for engaging any such third party are expressly included in the Quote the Customer then they will be charged to the Customer as an Additional Charge or passed through to the Customer (at Hawkins sole discretion).

7.6 Defects

- (a) The Customer will promptly, and in any event prior to the expiry of any warranty or defects liability period specified in the Quote (**Warranty Period**), notify Hawkins of any Defects or otherwise deficiencies or non-compliance in connection with any Products and provide sufficient details to Hawkins to enable it to assess any Defects.
- (b) Where the Quote contains a Warranty Period, then provided the Customer gives Hawkins such notice prior to the expiry of the Warranty Period then Hawkins will rectify any Defects for which it is reasonable within 30 Business Days or such further period that is reasonable in the circumstances.

7.7 Domestic Building Work

Where Hawkins' Services to the Customer include 'domestic building work' (**Domestic Building Work**) within the meaning of that expression in the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**), then any mandatory provisions required to be included in this Agreement by the QBCC Act will be deemed to be included.

General T&Cs

8. General obligations

8.1 Hawkins' general obligations

Hawkins warrants, acknowledges and undertakes (as the case may be) that:

- (a) the Products when completed will meet the Specifications, unless the Quote or this Agreement expressly provides otherwise; and
- (b) it will ensure that all of its personnel comply with all lawful and reasonable directions given to them by the Customer in relation to workplace health and safety while at the Site, and will promptly remove any personnel who do not so comply.

8.2 Customer's general obligations

To the extent permitted by law, the Customer warrants, acknowledges and undertakes (as the case may be) at all times that:

- (a) any person accepting or signing any Quote or any constituent part of the Agreement is duly authorised to bind the Customer (and each person who does so provides this warranty personally);
- (b) the Customer will duly and punctually comply with any other agreement with Hawkins for the provision of Products and will ensure that its officers, employees, agents and contractors comply with this Agreement;
- (c) unless the Quote expressly states to the contrary, all Products, including any Deliverables are being acquired by the Customer solely for use in the Customer's business and the Customer is not acquiring any Products for personal or domestic use;
- (d) the particulars in the Quote and all other information provided to Hawkins in connection with the Agreement are true, correct and not misleading in any respect (including by way of omission) and are up to date, and prior to the date of the Quote the Customer has provided Hawkins all Specifications, information and documentation that may be required in order for Hawkins to properly provide the Products in accordance with any Specifications specified in the Quote (if any);
- (e) Hawkins relies on the information and any Specifications provided by the Customer, and any advice, recommendations or Products provided by Hawkins have been made in reliance on the information so provided, and if the Customer's requirements change (or Hawkins is not properly informed) then the Products (including

any Deliverables) may not be suitable for the Customer's purposes and may require rectification that will result in an Additional Charge;

- (f) it will provide the Customer Supplied Items at the timeframes provided for in the Quote (or if none are stated then as and when reasonably required by Hawkins) and will otherwise comply with any timetable requirements set out in a Quote, failing which Hawkins may not be able to meet the timeframes in the Quote (for example, due to scheduling issues with other customers) and Additional Charges may apply;
- (g) any goods, designs, documents and other materials provided by or on behalf of the Customer will not infringe the Intellectual Property Rights of any person and that it has procured all consents, waivers and assignments necessary to give effect to this Agreement and to enable Hawkins to provide the Products without infringing any third party's rights;
- (h) if the Customer is the trustee of any trust, the Agreement is binding on the Customer in its personal capacity and in its capacity as trustee of any trust, the Customer is validly appointed as the sole trustee and will not allow any new trustee to be appointed and the Customer has the right to be fully indemnified out of the trust assets and from the beneficiaries for all liabilities in connection with the Agreement; and

8.3 Customer Specific Products

Where Hawkins is engaged to supply Products (including performing any Construction Services) based on any specifications, designs, finishes or other requirements specific to (or prescribed by) the Customer (together any **Customer Specific Products**), the following provisions will apply:

- (a) Hawkins' obligations will be limited to supplying the Products in accordance with any requirements stated in the Quote, and any specifications, designs, finishes or requirements not stated in the Quote will not apply to the supply of the Customer Specific Products;
- (b) if the Customer requests changes to the specifications, features, materials, finishes or functionality of the Customer Specific Products, then without limiting its other rights Hawkins reserves the right to vary the prices and any increased costs or Liabilities will be recoverable as an Additional Charge;
- (c) unless the Quote provides for Hawkins to provide design or similar Services to formulate the specifications for the Customer Specific Products, the Customer is solely responsible for formulating the specifications for the Customer Specific Products and Hawkins does not warrant that any Customer Specific Products that are manufactured and supplied in accordance with any specifications, designs or other requirements provided by the Customer will function as intended; and
- (d) where the Customer requests that Hawkins apply a non-standard finish, coating or other application to any Products (including any of the foregoing that are provided by a third party), to the extent the law allows Hawkins will not be Liable to the Customer for any defects, failures, deficiencies or other issues with such finish, coating or other application.

8.4 Delivery of Products

Hawkins will only deliver any Products (which in this clause includes a reference to any Equipment the subject of Equipment Hire) or arrange for mobilisation or demobilisation of any Products where that is expressly stated in the Quote. Unless the Quote expressly provides for Hawkins to deliver the Products, the Customer will arrange for collection of the Products from Hawkins' nominated address during normal business hours on the date notified by Hawkins that the Products are ready for collection. If Hawkins agrees to deliver the Products, then unless the Quote expressly provides otherwise:

- (a) the delivery terms will be notified to the Customer prior to dispatch of the Products, the Customer must insure the Products while in transit as per Hawkins' requirements and arrange for all approvals or clearances required as well as the unloading of any Products at the delivery location or vessel at the time the Products are delivered (at the Customer's cost);
- (b) the Customer will pay any Fees or monies stated in the Quote for the delivery of the Products, and if the prices in the Quote do not specifically include delivery costs or where the Customer requests Hawkins or its delivery provider to unload or place the Products at a location other than on the street at the delivery/collection location, then the Customer will incur Additional Charges;
- (c) to the extent the law permits, Hawkins will not be liable for any damage to the Products in transit, including where the Customer has engaged a third party to arrange delivery of the Products or where the Customer is required to insure the Products in transit
- (d) risk in the Products will pass to the Customer immediately prior to loading the Products for dispatch from Hawkins' premises (or such earlier time provided for in the delivery terms notified by Hawkins), unless Hawkins agrees otherwise in writing in which case risk in the Products will pass at the time immediately before unloading of the Products at the delivery location, and any claims against Hawkins in respect of loss or damage to the Products in transit while the Products are still at Hawkins' risk (if applicable) will be limited to the monies that Hawkins receives (or would be entitled to receive but for this clause) under any applicable insurance policy taken out by Hawkins.

8.5 Supply of Products to third party

Where Hawkins supplies Products to a third party at the request of the Customer (or person who would be a Customer if the Products were supplied directly to them), then the person who requested Hawkins to provide the Products will also have the obligations of a 'Customer' for the purposes of this Agreement and (without limitation) will be liable for payment of the Fees and other monies jointly and severally with any third party that Hawkins invoices for the supply of the Products.

8.6 Manufacturer's warranties

Hawkins may supply Products that are manufactured by a third party. Where Hawkins is not the manufacturer of the Products, the Customer acknowledges that Hawkins is not the manufacturer of the Products and that any information provided or published by Hawkins in respect of the specifications, purposes for use or warranties relating to the Products are for information purposes only and are not binding on Hawkins. Hawkins may assist the Customer in making a claim under any manufacturer's warranty relating to the Products, subject to the Customer reimbursing Hawkins for its costs in doing so to the extent the law allows Hawkins to recover such costs.

8.7 Mutual obligations of health and safety

Each party undertakes to the other party that they will, at all times, comply with (and ensure their personnel comply with) all applicable laws and each other's policies (notified to the other in writing from time to time) relating to workplace health and safety that are relevant to this Agreement and the performance of the parties' respective obligations. Where the Customer has policies relating to workplace health and safety that Hawkins reasonably considers exceed standard industry practice and such policies were not notified to Hawkins prior to providing the Quote, Hawkins will be entitled to recover any additional costs or Liability incurred in complying with such policies as an Additional Charge.

8.8 Use of Products

While Hawkins has put every effort into designing its Products with safety in mind, the Customer acknowledges that the Products (which in this clause 8.8 includes a reference to any plant or equipment upon which any Products are installed) may cause injury or property damage if not used properly and the Customer will therefore ensure that:

- (a) any person using the Products is provided with any product manuals, guidance material or the like that is supplied or otherwise published by Hawkins from time to time (which the Customer acknowledges receipt of at the time of delivery of any Products) and that those using the Products comply with the foregoing and any applicable laws;
- (b) the Products are operated and maintained in a skilful and proper manner by persons who are trained, qualified and fit to operate or maintain the Products (as the case may be) and that any defects, malfunctions or safety issues are promptly notified to Hawkins and that the Products are not used until Hawkins confirms that they are safe for use.

8.9 On Site arrangements

Where Hawkins is providing Products (including any installation or commissioning of Equipment or Goods or the provision of Labour) at a location other than Hawkins' premises, then the Customer must:

- (a) provide reasonable, safe and prompt access to the location at the time provided for in the Quote or otherwise upon reasonable notice (not exceeding 14 days) being given by Hawkins and ensure that any location in which the Products are to be provided in respect of are in an appropriate (and safe) state and position for Hawkins to perform its obligations (and that any safety information or relevant specifications are provided to Hawkins within a reasonable period) prior to Hawkins attending the relevant location; and
- (b) ensure that there are reasonable facilities and personnel available for Hawkins to supply the relevant Products, Hawkins' personnel (including any Labour) receive appropriate safety inductions and personal protection equipment (unless Hawkins has agreed to be responsible for same) and that in the event of serious illness or injury (or other circumstances causing actual or threatened harm to Hawkins' personnel including any Labour) any and all available resources are provided in order to treat and care for the personnel or transport them to a hospital.

8.10 Title

- (a) Property and title in Goods and any physical Deliverables will remain with Hawkins and does not pass to the Customer until delivery or collection (as the case may be) and all money owing to Hawkins by the Customer on any account is paid in full without any set off or counterclaim. Pending payment in full, Hawkins retains title in the Goods, the Customer must hold the Goods as mere bailee, ensure that the Goods are kept free from any security interest, encumbrance or third party right or interest, ensure the Goods are insured and that the proceeds of any insurance policy in respect of any damage or destruction of the Goods are paid directly to Hawkins. For the avoidance of doubt, title remains with Hawkins in respect of any Equipment at all times.
- (b) If the Customer fails to pay any amounts due to Hawkins, Hawkins, its agents and their respective employees and contractors have the right and are granted an irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) to exercise Hawkins' rights under the Agreement, including the right to repossess the Products or any part of them.
- (c) To the extent the law permits, the Customer and any Guarantor waive any rights they have under the *Personal Property Securities Act 2009* (Cth) and any related legislation (**PPSA**) (including any rights to receive notices,

statements or documents from Hawkins), Hawkins need not comply with any provisions of the PPSA (but Hawkins may rely on all rights and remedies under the PPSA and Hawkins will separately have all the rights and remedies under Chapter 4 of the PPSA as if they were stated in these Standard Terms but without any corresponding obligations). The Customer and each Guarantor must do all things requested to preserve Hawkins' rights under the Agreement (including providing all information and notifying Hawkins of any changes to any details or information regarding any security interest held by Hawkins and signing any further documents requested by Hawkins to give effect to its security).

8.11 Security

- (a) Any of the Customer's directors or representatives who sign any constituent part of this Agreement (including any Quote) shall be considered '**Guarantors**' for the purposes of this Agreement. In consideration of Hawkins supplying Products to the Customer from time to time, each Guarantor agrees to provide the guarantees, indemnities and securities provided for in this Agreement.
- (b) The Guarantor (and if more than one, jointly and severally) guarantee to Hawkins the due payment and performance of all of the obligations of the Customer under this Agreement and any other agreement between the Customer and Hawkins, and indemnifies and covenants to keep indemnified Hawkins and its employees, contractors, officers and agents against any claims, damage, Liability or obligations (direct or indirect), which any of them may suffer, incur or sustain by reason of the Customer's failure to duly and punctually comply with any provision of this Agreement or any other agreement between the Customer and Hawkins (including any failure to pay monies owed to Hawkins).
- (c) The guarantee, undertaking and indemnity in the preceding paragraph is a continuing guarantee, undertaking and indemnity and will extend to the ultimate balance of any sums payable by the Customer to Hawkins, regardless of any intermediate payment or discharge in whole or in part. If any payment to or any discharge, release or arrangement given or entered into by Hawkins is avoided, reduced or restored for any reason then the liability of the Customer and any Guarantor shall continue, and any such obligation or security shall be reinstated, and Hawkins will be entitled to recover the value or amount of the payment or security from the Customer and any Guarantor.
- (d) The obligations of the Customer and any Guarantor under this Agreement will not be affected by an act, omission, matter or thing which, but for this clause would reduce, release or prejudice any of Hawkins's rights or the Guarantor's obligations in connection with this Agreement including: (i) any time, waiver, other concession or consent granted to the Customer; (ii) release or resignation of the Customer or any Guarantor; (iii) the taking, variation, compromise, release of, refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, the Customer or any Guarantor or any non-observance of any requirement in respect of any instrument or any failure to realise the full value of any security; (iv) any amendment, novation, supplement, extension, restatement or replacement of any part or the whole of this Agreement or any other agreement with Hawkins, including any extension of the Haas Period; (v) any unenforceability, illegality or invalidity of any obligation of any person under any agreement; (vi) any insolvency or similar proceedings; (vii) any part of this Agreement not being executed by or binding against the Customer, any Guarantor or any other party; (viii) to the extent permitted by law, any thing whatsoever; or (ix) the assignment or other dealing with this Agreement or any other agreement between the parties (whether with or without the consent of any party).
- (e) The provisions of Hawkins's standard long-form guarantee (which at the date of these Standard Terms is available on request) will be binding on the Guarantor and will be deemed to be incorporated into the guarantee given by the Guarantor pursuant to these Standard Terms, with such changes as are necessary to give effect to this provision.
- (f) The Customer and any Guarantor grant charge and security interest in and over all of their respective:
 - (i) 'Personal Property', which means all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) and all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the person has rights or is capable of granting a security interest from time to time; and
 - (ii) 'Other Property', which means all present and after acquired rights and interest in land and any other property, rights and interests that is not Personal Property from time to time,(together the '**Collateral**') by way of fixed charge in favour of Hawkins to secure the due and punctual payment of all monies that may be owing by the Customer or any other Guarantor to Hawkins from time to time and the due and punctual performance of all of their respective obligations and covenants under this Agreement or otherwise.
- (g) When exercising any security interest or charge arising in connection with this Agreement, Hawkins may do anything in respect of the property subject to the security that the owner would otherwise be capable of doing at law, including appointing a receiver in respect of the Collateral and thought itself or through an agent exercising the powers granted to receivers under section 420(1) and (2) of the *Corporations Act 2001* (Cth) as if references in that section to property were references to the relevant property subject to the security interest or charge and references to the receiver were references to Hawkins. Any receiver appointed in connection with this Agreement

must be fully indemnified by the Customer and any Guarantor for any Liability incurred and will always by the agent of the Customer or Guarantor (as the case may be).

8.12 Representatives

Each party appoints the person specified in the Quote as its representative to monitor the performance of this Agreement by the other party. Each party agrees that the person appointed as its representative shall have authority to act on behalf of the party for all purposes in connection with this Agreement.

8.13 Hawkins' Policies

The Customer acknowledges and agrees that it has read, understood and will ensure its employees, agents and contractors comply with the Hawkins Policies (which will not form part of the Agreement nor create any enforceable rights against Hawkins). Despite the foregoing, where the Hawkins Policies grant Hawkins rights, those rights are enforceable by Hawkins despite the Hawkins Policies not forming part of the Agreement.

8.14 Intellectual Property Rights

- (a) In this Agreement, '**Intellectual Property Rights**' includes any and all industrial and intellectual property rights now in existence or coming into existence anywhere in the world (whether registered or capable of registration or not and whether protected by statute or common law or not), including copyright, trade marks, patents and designs and any rights to apply for registration of or protection of the foregoing.
- (b) The Customer warrants that it owns (or has a licence to) all Intellectual Property Rights or other materials supplied or provided to Hawkins in connection with any Products and authorises Hawkins to reproduce or use same for the purposes of the Quote and this Agreement. Further, the Customer indemnifies and agrees to keep indemnified Hawkins against all Liabilities incurred by, or asserted against, Hawkins in relation to any breach of any Intellectual Property Rights in relation to any material supplied by the Customer.
- (c) All Intellectual Property Rights in the Products (including any quality standards, specifications, plans, designs, data, ideas, know-how, inventions, recipes or other items), technology or process relating to the Products, any other works created by (or on behalf of) Hawkins or any modifications to the foregoing vest in and remain the property of Hawkins. However, as consideration for the Customer's due and punctual compliance with this Agreement (including paying all amounts owing to Hawkins when due), Hawkins grants to the Customer a non-exclusive licence to use any designs, drawings or specifications that are provided to the Customer by Hawkins as part of the Products for the sole purpose of the Customer utilising same for the purposes for which they were supplied.

9. Insurance, liability and risk

9.1 Hawkins' insurance

Hawkins warrants that it has in place (and will maintain until all Products are provided) all insurance policies required for Hawkins to comply with the *Workers' Compensation and Rehabilitation Act 2003* (Qld) or any equivalent laws applicable to Hawkins, a public and product liability insurance policy in respect of the usual liabilities for personal injury or death to a person, or damage to property caused by the Products and professional indemnity insurance covering various liabilities in respect of professional services. Hawkins will provide to the Customer on request a certificate of currency to confirm such insurance policies are in place. The Customer undertakes not to do anything (or fail to do anything) that may prejudice or would otherwise be grounds for an insurer to refuse to pay any claim under Hawkins' insurance.

9.2 Customer's insurance

The Customer is required at the Customer's own cost, to effect and maintain for any period while title in any Goods or building materials remains with Hawkins and for any period that any Equipment the subject of Equipment Hire is at the Customer's risk, each of the following insurances, in relation to risks or occurrences arising, or which may arise, out of the performance of this Agreement or the Customer's use of the Equipment or the Goods:

- (a) insurance covering all liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the Customer under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to the Customer – such insurance must provide cover to an amount of not less than A\$20,000,000 for each and every claim, unless a greater amount is specified in the Quote; and
- (b) in respect of any Equipment Hire or Goods, insurance covering all loss and damage to the Equipment and Goods and such insurance policy must:
 - (i) be for not less than the replacement cost or market value of the item (whichever is the greater);
 - (ii) note Hawkins' interest (and the interest of any financier that Hawkins has disclosed) as the owner of the item and first loss payee in the event of damage to the item;
 - (iii) cover the respective liabilities of Hawkins and the Customer for personal injury, property damage (including to the Equipment or Goods) and all losses arising from the use of the Equipment or Goods;
 - (iv) apply similarly to any replacement Equipment or Goods; and

- (v) in respect of Equipment Hire, be approved by Hawkins prior to the commencement of the period of hire and not changed or cancelled without Hawkins' prior written consent.

9.3 Statutory warranties

- (a) Subject to paragraph (b) below and any express warranties contained in this Agreement, any other condition or warranty which would otherwise be implied in the Agreement which is capable of being excluded is hereby excluded, and all information, specifications and samples provided by Hawkins in relation to the Products are approximations only and small deviations or slight variations from them which do not substantially affect the Customer's use of the Products will not entitle the Customer to reject the Products, or to make any claim or seek to recover any Liabilities in respect of them.
- (b) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Frosty Boy's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to services to the supply of services again or cost of re-supplying the services again.
- (c) Subject to paragraph (b) above and to the maximum extent the law permits, the Customer acknowledges and agrees that:
 - (i) Hawkins will not be liable to any third party or in respect of any direct, indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits); and
 - (ii) Hawkins' maximum Liability (whether to the Customer or otherwise) in connection with any breach of this Agreement (including the performance or non-performance of Hawkins' obligations in relation to any Products, any negligence on the part of Hawkins or breach of any applicable laws) will be limited to the Fees paid to Hawkins in respect of the Products to which the event or circumstance giving rise to the claim against Hawkins relates.

9.4 Risk

To the extent the law permits, the Customer indemnifies and must keep indemnified Hawkins (including its related bodies corporate and their respective officers, employees, contractors and agents) against any and all Liabilities incurred, suffered or otherwise arising in connection with any:

- (a) breach by the Customer (or any of its personnel) of its covenants in favour of Hawkins, any Policies or any provision of the Agreement (including any inaccuracy of the warranties provided by the Customer);
- (b) any negligent or wilful act or omission by the Customer (or any of its personnel) that causes personal injury (including death) or property damage; or
- (c) any infringement of any third party's rights (including any Intellectual Property Rights) by the Customer (or any of its personnel) from time to time.

10. Termination

10.1 Termination due to breach

A party (**Innocent Party**) may terminate this Agreement by notice in writing to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party breaches any provision of this Agreement, and the breach is either incapable of remedy or is not remedied to the reasonable satisfaction of the Innocent Party within 14 days of the Innocent Party providing written notice of the breach; or
- (b) the Defaulting Party is insolvent or presumed to be insolvent, commits an act of bankruptcy or is declared bankrupt (as those terms as defined in the *Bankruptcy Act 1966* (Cth), has any creditors, debtors or similar petition relating to insolvency presented against it, or is subject to any form of insolvency proceedings, external administration or similar court or voluntary process (including any liquidation, administration, deed or scheme of company arrangement).

10.2 Consequences of termination

- (a) The termination of this Agreement is without prejudice to any rights that Hawkins may have at law or statute (which are hereby expressly preserved) and upon termination all monies owing to Hawkins (whether due for payment or not) will become immediately due for payment.
- (b) Any obligations of the Customer, or rights of Hawkins, under or in connection with this Agreement that expressly or impliedly survive the termination of this Agreement (or are capable of surviving) will continue in full force and effect (including any provisions in respect of Hawkins' Intellectual Property Rights and obligations of confidentiality).

11. General

11.1 Assignment

The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Hawkins. Hawkins may assign or otherwise deal with any of its rights or obligations under this

Agreement without the Customer's consent (including by subcontracting Hawkins' obligations, but any such subcontracting will not relieve Hawkins from its obligations under this Agreement). Hawkins may, by notice to the Customer, transfer or novate this Agreement (and all of the parties' respective rights and obligations in connection with this Agreement) to any related body corporate of Hawkins from time to time and upon such notice being given Hawkins will be released from its obligations owed to the Customer and such obligations will be assumed by the entity specified in the notice.

11.2 Dispute resolution

Except where a party seeks urgent interlocutory, injunctive or other declaratory relief or where the other party has not complied with this clause, each party agrees that prior to commencing any court proceedings in respect of any dispute or difference arising out of this Agreement (**Dispute**) it will first give notice of the Dispute to the other party invoking the procedure in this clause and describing the nature of the Dispute. Within 14 days of receipt of such notice, the parties' nominated representatives will meet in an effort to resolve the Dispute in good faith and if the Dispute is not resolved then the parties may commence court proceedings in respect of the Dispute.

11.3 Variation and waiver

- (a) Any variations to this Agreement will not have any effect whatsoever unless in writing and signed by Hawkins. Any failure of Hawkins to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of Hawkins' rights or powers arising pursuant to this Agreement.
- (b) If Hawkins reasonably believes that there is a variation arising from any changes to legislation or requirements of any Authorisation or Authority that takes effect after the date of this Agreement and such change:
 - (i) could not have reasonably been anticipated by Hawkins had it complied with its obligations under this Agreement and complied with all Relevant Standards; and
 - (ii) will cause Hawkins to incur more or less costs or time than otherwise would have been incurred or expended, then it will notify the Customer in writing of this change at its earliest convenience (acting reasonably). The notice will specify any variation to the Products, any further Fees payable in connection with the variation and the time to complete the variation. If the Customer does not object to any such variation or change in Fees in writing within 5 Business Days of the notice, then Hawkins may carry out such variation.

11.4 Further assurances

The Customer must, at its own expense, do everything reasonably necessary (including executing further documents) to give full effect to this Agreement and the transactions contemplated by it.

11.5 Updates to Standard Terms

To the extent the law permits, Hawkins may amend these Standard Terms from time to time and will notify the Customer of the amendments by publishing the amended documents on its Website or by written notice to the Customer, and the amended terms will apply to any Quotes provided after such notice (or any Products so provided if there is no Quote) and any variations to the Products the subject of existing Quotes.

11.6 Payments

All monies are payable to Hawkins at its principal place of business in the manner Hawkins reasonably requires from time to time in full without deduction, set-off or counterclaim (save to the extent that the Australian Consumer Law gives the Customer rights to the contrary). Hawkins may apply any payment received from the Customer to any amount owing or payable by the Customer to Hawkins from time to time on any account whatsoever. A statement in writing signed by an authorised officer of Hawkins from time to time setting out the moneys due or owing to Hawkins at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

11.7 Force Majeure

If the performance of the Agreement or any obligation under it (except for any obligation to pay) is prevented, restricted, interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of the party obliged to perform it (including any Act of God, act of any governmental or competent authority, a pandemic or government response to a pandemic, the imposition of any new taxes, excise fees, tariffs or other mandatory charges or an increase in same, default of any suppliers under any contract to which Hawkins is a party or seizure or stoppage of Goods or Equipment in transit), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under the Agreement with the utmost despatch whenever such causes are removed or diminished. If the Customer is the party affected by the event of force majeure and that results in Hawkins being unable to meet any timeframe for the provision of the Products, then Hawkins will be entitled to a reasonable extension of the timeframe and may impose an Additional Charge for increased costs or other matters. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of the Agreement.

11.8 Whole agreement

To the extent the law permits, the Agreement represents all the terms and conditions between the parties, and the Customer acknowledges that it has not entered into the Agreement (or accepted any Quote) in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection with

the Agreement from Hawkins or its agents and that no other terms or conditions (including those contained in any document submitted by the Customer) will apply to the supply of any Products nor will it impose any obligations on Hawkins, except where terms and conditions form part of the Agreement.

11.9 Severance

If a provision of the Agreement is not permitted by law (**Void Term**), then the Void Term shall be read down to the extent required to ensure it is enforceable; if the Void Term is unenforceable due to it imposing liability on the Customer, the Customer shall be liable to the extent the Customer caused or contributed to the liability; if the Void Term is unenforceable due to releasing Hawkins from an obligation, Hawkins will still be liable to perform the obligation to the extent Hawkins either caused or contributed to the obligation being breached. If the foregoing does not cure the invalidity or unenforceability, the Agreement does not include the Void Term and the remainder of the Agreement continues in full force.

11.10 Governing Law

The Agreement is governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

11.11 Discretion

Where the Agreement allows Hawkins a discretion or power (including where 'may' is used), the discretion or power may be exercised in Hawkins' absolute discretion, without giving reasons and may be conditional. Where the Agreement requires Hawkins to agree to something or Hawkins' consent to be obtained, the agreement must be in writing by a duly authorised representative of Hawkins and the consent must be prior written consent.

11.12 Interpretation

In the Agreement:

- (a) headings used in these Standard Terms are for convenience only and do not affect interpretation of these Standard Terms;
- (b) the provisions of the Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for proposing or preparing the Agreement;
- (c) a reference to a 'Liability' includes any cost, loss, liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent;
- (d) the words 'includes', 'including', are not words of limitation nor does the incorporation of more than one obligation limit any other obligation contained in that provision;
- (e) where an expression is defined, another part of speech or grammatical form of that expression have a corresponding meaning;
- (f) the singular includes the plural and vice versa, words importing a gender include every other gender and a reference to a person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity;
- (g) a reference to a party includes the party's executors, administrators, successors, permitted substitutes, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee;
- (h) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether an agreement, deed or otherwise) and includes any variation, replacement or novation of it; and
- (i) A reference to '\$' or 'dollar' is to Australian currency.