

ASCENT STRUCTURAL & ARCHITECTURAL STEEL

(Terms & Conditions of Trade)

1. Definitions

- 1.1 “ASAS” shall mean Malborough Investments Pty Ltd trading as Ascent Structural & Architectural Steel ABN 90 225 482 370 its successors and assigns or any person acting on behalf of and with the authority of ASAS.
- 1.2 “Customer” shall mean the Customer (or any person or entity acting on behalf of and with the authority of the Customer) as described on any, Order, quotation, work authorization or other form as provided by ASAS to the Customer.
- 1.3 “Equipment” shall mean all Equipment including any accessories supplied on hire by ASAS to the Customer (and where the context so permits will include any supply of Services), and are as described on the, Order, invoices, quotation, authority to hire, or any other work authorization form provided by ASAS to the Customer.
- 1.4 “Goods” shall mean all goods supplied by ASAS to the Customer (and where the context so permits will include any supply of Services) and are as described on the, Order, invoices, quotation, work authorization or any other forms as provided by ASAS to the Customer. In general terms, but not limited to, such Goods includes the fabrication and installation of architectural and structural steel for residential and commercial buildings, schools, councils and government buildings.
- 1.5 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.6 “Order” will mean any request for the supply of Goods and/or hire of Equipment made by the Customer to ASAS in accordance with clause 2 of these terms and conditions.
- 1.7 “Price” shall mean the price payable for an Order of Goods and/or Equipment as agreed between ASAS and the Customer in accordance with clause 3 of these terms and conditions.
- 1.8 “Services” shall mean all services supplied by ASAS to the Customer and includes any advice or recommendations.

2. Acceptance

- 2.1 The Customer is taken to have accepted, and be bound by, these terms and conditions if any instructions, correspondence, telephone orders, email requests and/ or Orders whatsoever are received by ASAS from the Customer for the supply of Goods and/or hire of Equipment to the Customer and/or the Customer’s acceptance of Goods and/or Equipment that are supplied or hired to it by ASAS (either situation to be known as an Order).
- 2.2 If the Customer has placed an Order by telephone, it must confirm that Order in writing (marked “Confirmation Only”) within twenty- four (24) hours after placing the Order . If there is any discrepancy between the parties record of the telephone Order (i.e. as noted by ASAS compared to the Customer’s written confirmation), then it is agreed that ASAS’s note of the telephone Order will become the Order unless ASAS expressly agrees in writing to vary that Order.
- 2.3 An email received by ASAS from the domain address of the Customer, is prima facie evidence of an Order being made by the Customer to ASAS, and upon that email’s receipt by ASAS immediately becomes an Order for the purposes of these terms and conditions (i.e. there are no further requirements for Customer authorization in relation to that Order).
- 2.4 Where more than one Customer has made any Order, the Customers shall be jointly and severally liable for all payments of the Price in relation to that Order.

- 2.5 Goods are supplied and Equipment hired by ASAS in accordance with these terms and conditions, including to the exclusion of anything to the contrary in any Order made by the Customer to ASAS, notwithstanding that any such Order may be sought to be placed on terms that purport to override these terms and conditions.
- 2.6 The Customer must give ASAS at least fourteen (14) days prior written notice of any proposed change in the ownership structure, name or details (including but not limited to, changes in the Customer's address, facsimile number, or business practice) of the Customer. The Customer agrees that it will be liable for any loss incurred by ASAS as a result of the Customer's failure to comply with this requirement.

3. Price and Payment

- 3.1 At ASAS's sole discretion the Price will be the amount either:
- (a) as indicated on any invoice/s provided by ASAS to the Customer in respect of any Order for Goods and/or Equipment; or
 - (b) Subject to clause 3.2, ASAS's quoted price in any Order, which shall be the Price provided that the Customer shall accept ASAS's quoted price in writing within thirty (30) days of receipt of that quotation.
- 3.2 At ASAS's sole discretion, ASAS reserves the right to change the Price in the event that a variation to ASAS's quoted price is requested by the Customer. Any change in the quoted price will then become the Price for the purposes of this clause 3.
- 3.3 At ASAS's sole discretion a non-refundable deposit may be required from the Customer.
- 3.4 At ASAS's sole discretion:
- (a) payment of the Price will be due to ASAS on delivery of the Goods and/or Equipment to, or collection of the Goods and/or Equipment by, the Customer; or
 - (b) Payment of the Price for pre-approved Customers will be due within thirty (30) days of the date of the invoice provided to the Customer in clause 3.1(a).
- 3.5 If no time for payment of the Price is specified by ASAS, then payment of the Order of Goods and/or Equipment will be due to ASAS within seven (7) days following the date of the invoice provided to the Customer in clause 3.1(a).
- 3.6 Payment can be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to two percent (2%) of the Price to be paid by the Customer direct credit, or by any other method as agreed to between the Customer and ASAS.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.8 Interest on overdue payments will accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ASAS's discretion such interest shall compound monthly at such a rate) after, as well as before, any judgment.
- 3.9 If the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by ASAS.
- 3.10 If the Customer defaults in payment, the Customer will indemnify ASAS from and against all costs and disbursements incurred by ASAS in pursuing the debt of that payment, including legal costs on a solicitor and client basis and ASAS's collection agency costs.
- 3.11 If any Customers' account remains overdue after thirty (3) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become

immediately due and payable to ASAS.

- 3.12 In the event of any default in payment by the Customer, the Customer hereby authorises ASAS or its agent to review the Customer's books and records (including, but not limited to, bank statements and other bank records), to determine whether the Customer is able to pay its debts as and when they fall due, and the Customer further irrevocably grants ASAS a licence to enter upon the Customer's premises for such purpose.

4. Delivery of Goods and/or Equipment

- 4.1 Subject to clause 5.4, delivery of the Goods and/or Equipment is taken to occur at the time that:
- (a) the Customer takes possession of the Goods and/or Equipment at ASAS's address; or
 - (b) The Customer takes possession of the Goods and/or Equipment at the Customer's nominated address (in the event that the Goods and/or Equipment are delivered to the Customer by ASAS or ASAS's nominated carrier).
- 4.2 At ASAS's sole discretion the costs of delivery are:
- (a) included in the Price; or
 - (b) In addition to the Price.
- 4.3 Delivery of the Goods and/or Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these terms and conditions.
- 4.4 Unless agreed otherwise in writing, prior to delivery, the unloading of Goods and/or Equipment is the Customer's responsibility. ASAS is not responsible for any damage resulting from the unloading of Goods and/or Equipment by the Customer, or by anyone on its behalf.
- 4.5 The Customer agrees that if ASAS's delivery truck is at the Customer's address or other address nominated by the Customer, longer than fifteen (15) minutes due to circumstances beyond the control of ASAS, then additional charges to the Customers will apply.
- 4.6 The failure of ASAS to deliver shall not entitle either party to cancel an Order.
- 4.7 Any time or date given by ASAS to the Customer for delivery is an estimate only. ASAS shall not be liable for any loss or damage whatsoever due to failure by ASAS to deliver the Goods and/or Equipment promptly or at all as a result of circumstances beyond the control of ASAS.
- 4.8 If delivery is delayed as a consequence of the Customer's instructions, or lack thereof, then ASAS may at its sole discretion place the Goods and/or Equipment in storage, and charge the Customer a reasonable fee for such storage. In the event that the Goods and/or Equipment are to be stored at premises other than ASAS's usual place of business then the Customer shall also be liable for all reasonable fees (including cartage) incurred by ASAS in storing the Goods or hire of Equipment at that place.
- 4.9 Where ASAS cannot access the Customer's address to deliver the Goods and/or Equipment, the Goods and/or Equipment shall be delivered and left as close as practicable to the Customer's address. Or in the event the Customer requests ASAS to enter a property to deliver the Goods and/or Equipment, then ASAS accepts no responsibility for any damage caused by ASAS in doing so.
- 4.10 ASAS may deliver the Goods and/or Equipment in separate instalments.
- 4.11 In the event that the Customer cancels delivery of Goods and/or Equipment, the Customer shall be liable for any loss incurred by ASAS (including, but not limited to, any loss of profits) up to the time of, or as a result of the cancellation.

5. Risk

- 5.1 All risk of damage and loss of the Goods and/or Equipment passes to the Customer on delivery of the

Goods and/or Equipment. The Customer must obtain insurance that covers the delivery of the Goods and/or Equipment.

- 5.2 If any of the Goods and/or Equipment are damaged or destroyed during the delivery process but prior to the risk responsibility passing to the Customer, ASAS is entitled to the benefit of all insurance policies and proceeds payable for the Goods and/or Equipment obtained by the Customer. The production of these terms and conditions by ASAS is sufficient evidence of ASAS's rights to benefit of all insurance policies and proceeds without the need for ASAS or the Customer to make further representations.
- 5.3 Where the Customer expressly requests ASAS to leave Goods and/or Equipment outside ASAS's premises for collection, or to deliver the Goods and/or Equipment to an unattended location, then all risk of damage and loss of the Goods and/or Equipment passes to the Customer at that time. Again it is the Customer's responsibility to ensure the Goods and/or Equipment are insured adequately.
- 5.4 Where ASAS has imported Goods and/or Equipment into Australia, or has made (or had made) Goods and/or Equipment to specific Customer requirements, then delivery of those Goods and/or Equipment shall be deemed to have taken place, and all risk for those particular Goods and/or Equipment will pass to the Customer immediately at a time that those Goods and/or Equipment are received by, and/or placed into storage by ASAS, and ASAS has notified the Customer of the same. Upon notification it is the Customer's responsibility to ensure that the Goods and/or Equipment are insured adequately. All such Goods and/or Equipment will be stored at the Customer's expense on the same basis as specified in clause 4.8 above.

6. Title to Goods

- 6.1 ASAS and the Customer agree that ownership of the Goods does not pass to the Customer until:
- (a) the Customer has paid ASAS all amounts owing for the particular Goods (i.e. the Price, storage fees, interest and so on), and such payments (other than cash) have been honoured, cleared or recognized; and
 - (b) The Customer has complied with all other obligations to ASAS in respect of all contracts between ASAS and the Customer and these terms and conditions.
- 6.2 It is further agreed that:
- (a) where practicable the Goods shall be kept separate, identifiable and in a good and serviceable condition, until ASAS has received payment and all other obligations of the Customer are complied with;
 - (b) the Goods be secured, and appropriately insured against any risk, damage and theft;
 - (c) ASAS has the right of stopping the Goods in transit whether or not delivery has been made;
 - (d) the Customer is only a Bailee of the Goods and until such time as ASAS has received payment in full for the Goods then the Customer will hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to ASAS for the Goods, on trust for ASAS;
 - (e) the Customer will not deal with the money of ASAS in any way which may be adverse to ASAS;
 - (f) the Customer will not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of ASAS;
 - (g) ASAS can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer;
 - (h) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other end products, the parties agree that ASAS will be the owner of the end products;

- (i) the Customer will, prior to attaching any Goods onto any building, notify the owner of the building that such Goods are subject to this reservation of title clause, except only as provided by law;
- (j) Until such time as ownership of the Goods shall pass from ASAS to the Customer, ASAS may give notice in writing to the Customer to return the Goods or any of them to ASAS. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods cease;
- (k) if the Customer fails to return the Goods to ASAS then ASAS, or ASAS's agent may (as the invitee of the Customer), enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated, and take possession of the Goods, and ASAS will not be held liable for any damage, loss or claims to any property caused by accessing or attempting to access such Goods or enforce any of ASAS's rights under this clause 6; and
- (l) If ASAS repossesses the Goods and the Customer does not within a reasonable time pay the Price, then ASAS reserves the right to re-sell the repossessed Goods and recover from the Customer damages for any loss occasioned by their breach of these terms and conditions. Upon such resale the original contract for the supply of the Goods shall be rescinded without any prejudice to any claim that ASAS has for damages.

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

7.1 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 ASAS by these terms and conditions; and
- (d) Security interest has the meaning given to it by the PPSA.

7.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
 - (i) all Goods previously supplied by ASAS to the Customer (if any); and
 - (ii) All Goods that will be supplied in the future by ASAS to the Customer.

7.3 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 ASAS may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
- (b) indemnify, and upon demand reimburse, ASAS 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 charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior

written consent of ASAS;

- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of ASAS; and
- (e) Immediately advise ASAS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

- 7.4 ASAS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 7.5 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.
- 7.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed to in writing by ASAS, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.8 The Customer shall unconditionally ratify any actions taken by ASAS under clauses 7.3 to 7.5.

8. Security and Charge

- 8.1 In consideration of ASAS agreeing to supply the Goods and/or hire the Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 8.2 The Customer indemnifies ASAS from and against all ASAS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ASAS' rights under this clause.
- 8.3 The Customer irrevocably appoints ASAS and each director of ASAS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Customer's behalf.
- 8.4 The Customer hereby acknowledges and agrees that ASAS 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. Returns

- 9.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
 - (b) ASAS has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) ASAS will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) The Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 ASAS may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

9.3 Non-stock list items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

10. Defects, Warranty and Returns and the Competition and Consumer Act 2010 (CCA)

10.1 The Customer must inspect the Goods and/or Equipment on delivery and must within one (1) working day of delivery notify ASAS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the Order, description or quote. The Customer must notify any other alleged defect in the Goods and/or Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow ASAS to inspect the Goods and/or Equipment.

10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

10.3 ASAS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ASAS makes no warranties or representations under these terms and conditions including but not limited to the quality or suitability of the Goods and/or Equipment. ASAS' liability in respect of these warranties is limited to the fullest extent permitted by law.

10.5 If the Customer is a consumer within the meaning of the CCA, ASAS' liability is limited to the extent permitted by section 64A of Schedule 2.

10.6 If ASAS is required to replace the under this clause or the CCA, but is unable to do so, ASAS may refund any money the Customer has paid for the Goods and/or Equipment.

10.7 If the Client is not a consumer within the meaning of the CCA, ASAS' liability for any defect or damage in the Goods and/or Equipment is:

- (a) Limited to the value of any express warranty or warranty card provided to the Customer by ASAS and ASAS' sole discretion;
- (b) Limited to any warranty to which ASAS is entitled, if ASAS did not manufacture the Goods and/or Equipment;
- (c) Otherwise negated absolutely.

10.8 Subject to this clause, returns of the Goods and/or Equipment will only be accepted provided that:

- (a) The Customer has complied with the provisions of clause 10.1; and
- (b) ASAS has agreed that the Goods and/or Equipment are defective; and
- (c) The Goods and/or Equipment are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) The Goods and/or Equipment are returned in as close a condition to that in which they were delivered as is possible.

10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, ASAS 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 Equipment;
- (b) The Customer using the Goods and/or Equipment for any purpose other than that for which they were designed;
- (c) The Customer continuing the use of any the Goods and/or Equipment 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 ASAS;
 - (e) Fair wear and tear, any accident or act of God.
- 10.10 ASAS may in its absolute discretion accept non-defective for return in which case ASAS may require the Customer to pay any handling fees of up to twenty percent (20%) of the value of the returned Goods and/or Equipment plus any freight costs.
- 10.11 Notwithstanding anything contained in this clause if ASAS is required by a law to accept a return then ASAS will only accept a return on the conditions imposed by that law.

11. Limitation of Liability

- 11.1 ASAS will be entitled to rely on the accuracy of any plans, specifications and other information relating to the Goods and/or Equipment provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer to ASAS is inaccurate, ASAS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 11.2 In the event the Customer gives information to ASAS relating to measurements and quantities required for the Goods and/or Equipment, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or ASAS places an Order based on those measurements and quantities. ASAS accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
- 11.3 ASAS may prepare an estimate of dimensions and quantities of Goods based on plans, specifications or other information given by, or on behalf of the Customer. ASAS does not accept any liability as to the estimate, as the estimate is provided to the Customer as indicative only and ASAS is not responsible for any mistakes or errors in the estimate. The Customer undertakes to check any such estimate and in any event accepts full responsibility for the dimensions and quantities of Goods, as per an Order, and as reviewed by the Customer (without relying on the estimate).
- 11.4 Where ASAS gives advice, recommendations, information, assistance and/or service to the Customer regarding the suitability or purpose of the Goods and/or Equipment, or in connection with the design, delivery times, dimensions, installation or use of the Goods and/or Equipment, then it is given in good faith and ASAS shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on any advice, recommendations, information, assistance and/or service.
- 11.5 The Customer agrees that as a condition of sale, any description or specification given by ASAS, or in any printed literature of ASAS is for general indicative purposes only and shall not be taken as implying as to fitness for any particular purpose, and does not render ASAS responsible howsoever and whatsoever except to the extent that the Goods and/or Equipment shall comply with the standards set out in such description or specification.
- 11.6 In the event the Goods and/or Equipment are required for a particular purpose, the Customer must clearly specify that purpose in writing in the Order placed with ASAS and obtain written assurance from ASAS that the Goods and/or Equipment, when supplied, will meet that requirement. In the event the Customer fails to comply with this clause, then the Customer agrees that it did not rely on the skill or judgment of ASAS in relation to the suitability of the Goods and/or Equipment for a particular purpose.

12. Intellectual Property

- 12.1 Where ASAS has designed, drawn written or prepared Goods for the Customer, then the copyright in those designs and drawings, prototypes, productions and documents shall remain vested in

ASAS, and shall only be used by the Customer at ASAS's discretion.

- 12.2 The Customer warrants that all designs or instructions to ASAS will not cause ASAS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ASAS against any action taken by a third party against ASAS in respect of any such infringement.
- 12.3 The Customer agrees that ASAS may use any documents, designs, drawings or Goods created by ASAS for the purposes of advertising, marketing, or entry into any competition.

13. Breach of Terms and Conditions

- 13.1 Without prejudice to any other remedies ASAS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) in these terms and conditions:
- (a) ASAS may suspend or terminate the supply of Goods and/or hire of Equipment to the Customer and any of its other obligations under these terms and conditions. ASAS will not be liable to the Customer for any loss or damage the Customer suffers because ASAS has exercised its rights under this clause; and
 - (b) Any discount, markdown, reduction or special price, previously offered by ASAS to the Customer may be withdrawn, or cancelled, and the Price shall become ASAS's standard Price as at the date of the original sale.
- 13.2 Without prejudice to ASAS's other remedies at law ASAS shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amount owing to ASAS shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to ASAS becomes overdue, or in ASAS's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangements with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 ASAS may immediately cancel any particular supply of Goods and/or hire of Equipment to which these terms and conditions apply or cancel the supply of its Goods and/or hire its Equipment at any time before the particular Goods and/or Equipment to which these terms and conditions relates are provided by giving written notice to the Customer. On giving such notice ASAS will repay to the Customer any sums paid in respect of the Price (less any monies that ASAS may choose to allocate against an existing debt of the Customer). ASAS will not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 Cancellation of Orders for Goods and/or Equipment made to the Customer's specifications or non-stock list items will definitely not be accepted, once production has commenced.

15. Privacy Act 1988

- 15.1 The Customer and/or its Guarantor/s (herein referred to as the Customer) agree for ASAS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by ASAS.
- 15.2 The Customer agrees that ASAS may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or

- (b) to notify other credit providers of a default by the Customer; and/or
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Customer consents to ASAS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by ASAS for the following purposes (and for other purposes as shall be agreed between the Customer and ASAS or required by law from time to time):
- (a) the provision of Goods and/or Equipment; and/or
 - (b) the marketing of Goods and/or Equipment by ASAS, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods and/or Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer and payment of the Review by the Customer; and/or
 - (e) Enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and/or Equipment.
- 15.5 ASAS may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; or
 - (b) Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that ASAS is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that in the opinion of ASAS, the Customer has committed a serious credit infringement (that is, fraudulently or shown and intention not to comply with the Customers credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100.00) or more, have been dishonoured more than once; or
 - (h) The credit provided to the Customer by ASAS has been paid or otherwise discharged.

16. Construction Contracts Act 2004

- 16.1 At ASAS's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.

16.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

17. Equipment Hire

17.1 Equipment shall at all times remain the property of ASAS and is returnable by the Customer on demand by ASAS. In the event that the Equipment is not returned to ASAS in the condition in which it was delivered ASAS retains the right to charge the Customer the full cost of repairing the Equipment. In the event Equipment is not returned at all ASAS shall have right to charge the Customer the full cost of replacing the Equipment.

17.2 The Customer agrees to:

- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment;
- (b) not alter or made any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and
- (c) Keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by ASAS to the Customer.

17.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, ASAS's interest in the Equipment and agrees to indemnify ASAS against physical loss or damage including, but not limited to, the perils or accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

18. General

18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

18.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.

18.4 ASAS shall be under no liability whatsoever to the Customer or any third party for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer or third party arising out of a breach by ASAS of these terms and conditions.

18.5 In the event of any breach of these terms and conditions by ASAS the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Equipment.

18.6 ASAS reserves the right to at any time, to set-off all monies, then or contingently owed to ASAS by the Customer against any debt ASAS may owe to the Customer. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by ASAS nor to withhold payment of any invoice because part of that invoice is in dispute.

18.7 ASAS may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Customer may not assign, subcontract or otherwise transfer any right or liability under these terms and conditions without ASAS's prior written consent.

- 18.8 The Customer agrees that ASAS may review these terms and conditions, then that change will take effect from the date on which ASAS made such changes. The Customer shall be under no obligation to accept such changes except where ASAS supplies further Goods and/or hires for their Equipment to the Customer and the Customer accepts such Goods and/or Equipment.
- 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.10 The failure by ASAS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ASAS's right to subsequently enforce that provision.
- 18.11 If any payment made under or relating to these terms and conditions constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply.
- 18.12 These terms and conditions expresses and incorporates the entire agreement between the parties and supersedes any prior negotiation, understanding, communication or agreement between the parties.
- 18.13 Each party must execute any document and perform any action necessary to give full effect to these terms and conditions, whether before, or after performance of these terms and conditions.
- 18.14 The provisions of these terms and conditions do not merge with any action performed or document executed by any party for the purposes of performance of these terms and conditions. Any representation in these terms and conditions survives the execution of any document for the purposes of, and continues after, performance of these terms and conditions. Any indemnity agreed by any party under these terms and conditions constitutes a liability of that party separate and independent from any other liability of that party these terms and conditions or any other agreement and survives and continues after performance of these terms and conditions.
- 18.15 Any failure by ASAS to exercise any right under these terms and conditions does not operate as a waiver and the single or partial exercise of any right by ASAS does not preclude any other or further exercise of that or any other right by ASAS
- 18.16 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of ASAS.