

# STANDARD TERMS AND CONDITIONS FOR PURCHASE OF EQUIPMENT

## 1 DEFINITIONS AND INTERPRETATION

"**CALP**" or "**CALP's** means **Compressed Air Light & Power ABN 90 913 671 384, Compressed Air Light and Power (Orange) Pty Ltd 'ACN 633 189 376 and Cannington Family Trust** or any of its Related Bodies Corporate.

"**Amount Owing**" means all amounts owing by the Buyer to CALP on any account or in any capacity.

"**Australian Consumer Law**" means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in the State or Territory in which the Equipment was purchased from CALP

"**Buyer**" means the person, firm, organisation, partnership, corporation or other entity purchasing the Equipment from CALP (in any capacity, including in its personal capacity, on behalf of another person, firm, organisation, partnership, corporation or other entity or as trustee of a trust), as identified in the Purchase Agreement.

"**Claim**" means any claim (whether actual or contingent) including a claim for loss, damages and expenses (including legal fees) arising out of tort, breach of statute, breach of warranty or guarantee or breach of this Agreement.

"**Deal**" when used in relation to an item of property or a right or obligation, includes sell, offer for sale, transfer, assign or grant or allow to exist any Encumbrance, trust, option or other right in relation to the whole or any part of the item of property, right or obligation (as applicable).

"**Encumbrance**" means any:

(a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or

(b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or

(c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or

(d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

(e) or any agreement to create any of them or allow them to exist. "**Equipment**" means the equipment and materials supplied by

CALP to the Buyer by way of sale, including generators, compressors, distribution boards, leads, hoses and other accessories and parts.

"**Goods**" means all goods, Equipment and other personal property sold, leased, hired or otherwise supplied by CALP to the Buyer before or after the date of the Purchase Agreement.

"**Insolvency Event**" means an event where a petition is presented for the winding up of the Buyer, an administrator, receiver or receiver and manager is appointed, the Buyer is deregistered or makes or proposes to make an arrangement with its creditors, or execution is levied upon the assets of the Buyer and is not satisfied within 7 days or the Buyer is unable to pay all its debts, as and when they become due and payable.

"**Liability**" means any liability (whether actual, contingent or prospective), loss, damage, cost and expense of whatsoever description and howsoever arising.

"**Loss**" means any loss, damage, Liability, cost, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for.

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth) and where applicable includes all regulations made pursuant to it.

"**Purchase Agreement**" means the agreement between CALP and the Buyer for the purchase of Equipment or Services which includes:

(f) any Commercial Credit Application;

(g) any Quotation of CALP;

(h) the Purchase Order; and

(i) these Terms.

"**Purchase Order**" means the Order which sets out the specific equipment to be purchased by the Buyer pursuant to any Quotation issued by CALP

"**Related Body Corporate**" has the meaning it has in the *Corporations Act 2001* (Cth).

"**Representative**" of a person includes an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor, sub-contractor or Related Body Corporate of that person.

"**Services**" means any services to be supplied by CALP to the Buyer in connection with the Equipment.

"**Terms**" means these Standard Terms and Conditions for Purchase of Equipment.

"**Warranty Registration Form**" means the document which sets out the specific equipment to be covered by CALP's warranty pursuant to clause 16.

1.2 The term "including" means "including without limitation".

1.3 Terms used in clause 9 which are not otherwise defined in these Terms have the meaning given in the PPSA unless the contrary intention appears.

1.4 A requirement that CALP agree in writing requires that CALP specifically executes a written agreement to the relevant effect, and excludes any deemed agreement and agreement by conduct or representation.

## 2 ORDERS

2.1 The Buyer must issue a purchase order for any Equipment or Services in writing.

2.2 No orders are binding on CALP until they have been accepted in writing or performed by CALP:

2.3 Without limiting anything in these Terms, the Buyer acknowledges and agrees that CALP may only accept an order:

(a) from a Buyer who has an approved credit rating;

(b) if the order form specifies the Buyer's Purchase Order number;

(c) contains full and clear instructions as to whether the Equipment is to be collected from CALP's premises or delivered to a place nominated by the Buyer.

## 3 PRICE

3.1 Unless otherwise agreed in writing, the price payable by the Buyer for the Equipment or Services ("Price") is the price prevailing at the earlier of the date of the order or the date of delivery. Any Prices notified to the Buyer in any offer or quote are valid for 30 days (unless otherwise stated).

3.2 All prices are subject to change without notice unless CALP has agreed in writing to fix the Price for a specified time period. Up until acceptance by CALP of a valid Purchase Order and subject to these Conditions, any Price or quote is subject to exchange rate variations.

3.3 Unless expressly included in the price list or Purchase Contract, all prices quoted exclude all transport costs and GST.

3.4 If a party makes a taxable supply in connection with the Purchase Agreement for any consideration then the party liable to pay the consideration for the taxable supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the taxable supply. A party's right to payment under this clause is subject to a tax invoice being delivered to the party liable to pay for the consideration for the taxable supply. Expressions used in this clause 3.4 have the same meaning as those expressions defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) All amounts payable in the Purchase Agreement are exclusive of GST unless otherwise specified.

#### **4 DEPOSIT**

4.1 CALP may require the Buyer to pay a deposit for the purchase of the Equipment.

4.2 Any agreed deposit must be paid at the time of ordering or in accordance with clause 5 subject to an invoice for such amount being supplied by CALP..

4.3 Deposits are non-refundable.

#### **5 PAYMENT**

5.1 The Buyer must pay CALP any amount due to CALP without set off, counterclaim or any deduction. Payments must be made at the times stated in the Purchase Agreement, and in any event, within 30 days from the date of any invoice.

5.2 Should the Buyer fail to take delivery of the Equipment within 7 days from the date the Buyer requested delivery in its Purchase Order (or otherwise communicated to CALP at first instance) and the Equipment is ready and able to be delivered by CALP, CALP reserves its right to:

(a) Sell the Equipment to a third party and recover the loss (if any) from the Buyer;

(b) Arrange storage of the Equipment and recover any expenses from the Buyer; and

(c) Issue an invoice to the Buyer for full payment of the Equipment (even if still in the possession of CALP) pending delivery of the Equipment to the Buyer.

5.3 Payment must be made by such method as is agreed with CALP.

The Buyer acknowledges that CALP may impose a charge for accepting payments by credit card.

5.4 If the Buyer fails to make payment in accordance with this clause 5 or within 14 days of written demand for payment by CALP, all amounts owing by the Buyer to CALP on any account will immediately become due and payable.

5.5 Notwithstanding any other provision of the Purchase Agreement, if the Buyer fails to comply with its obligations to make any payment under this clause 5 ("Payment Breach"), CALP may immediately, and without any liability to the Buyer or any other party, suspend performance of its obligations under the Purchase Agreement (including the provision of any goods, services or equipment) until the Payment Breach has been remedied. CALP will not be in default under the Purchase Agreement, taken to have repudiated the Purchase Agreement, or be liable for any loss incurred or suffered by the Buyer or any third party, as a result of, or in connection with, CALP suspending performance of its obligations in accordance with this clause 5.7.

5.6 Interest will accrue and be charged on overdue amounts at the rate of 2% per month, (but in any event not less than the rate prescribed under Commonwealth or State legislation governing penalty interest rates (whichever is the higher) plus an additional 3% per annum), calculated and compounded daily.

5.7 CALP may employ a debt collection agency to obtain payment of overdue monies.

5.8 The Buyer acknowledges and agrees that the Buyer will be charged for all costs and expenses incurred by CALP under clause 5 on an indemnity basis.

#### **6 TRADE ACCOUNTS**

6.1 CALP may review at any time the credit accommodation granted by CALP to the Buyer. CALP is at all times entitled in its sole discretion to seek immediate payment in full on demand, vary or withdraw any trade credit facility granted to the Buyer (or its nominee) for (reasons including but not limited to failing to make payments or use the Equipment in accordance with the Purchase Agreement) without any liability to the Buyer (or its nominee) or any other party. If Credit is withdrawn, a statement may be issued at that time requiring payment within 7 days of any amount due and owing.

6.2 Liability for trade credit accounts held in more than one name will be joint and several.

#### **7 DELIVERY**

7.1 Unless otherwise agreed in writing, all Equipment will be dispatched by CALP (or its nominated carrier) and delivered to the Buyer (or the nominated delivery point) at the Buyer's expense. All freight, duty, taxes, insurance and other costs of transport are additional to the price of the Equipment and Services and will be invoiced and payable in full in accordance with clause 5.

7.2 If a delivery date is specified, CALP will endeavour to deliver within the time so specified but in no circumstances will CALP be liable for any Loss or damage of any kind whatsoever caused directly or indirectly by any, delay in or failure of delivery in whole or in part.

7.3 No delay or failure to deliver any Equipment will entitle the Buyer to cancel the Purchase Agreement or refuse to accept delivery or installation of the Equipment. If delivery is delayed due to the Buyer's action or inaction, the Buyer must reimburse CALP for any additional expenses incurred due to the delay.

7.4 The Buyer must inspect all Equipment upon delivery and must give notice in writing (email, facsimile, letter, text message) including accompanying picture or video footage to CALP of any defect, matter or thing by which the Buyer alleges that the Equipment is not in accordance with the Purchase Agreement or the Buyer's order **within 3 Business Days of delivery**. Failing such notice and, to the extent permitted by law, the Equipment is deemed to have been delivered and accepted by the Buyer and the quantity, description, date, time and place of delivery as indicated on CALP's invoice or delivery docket or copies thereof will be deemed to be conclusive evidence of quantity, description, date, time and place of delivery of Equipment.

#### **8 RISK**

8.1 Risk in and responsibility for the Equipment passes to the Buyer at the earlier of:

(a) the date for delivery specified by the Buyer in its Purchase Order (or as otherwise communicated to CALP) if the Equipment is ready for delivery but the Buyer delays acceptance of the Equipment; and

8.2 (b) when the Equipment is loaded onto any vehicle for transport at CALP premises (regardless of whether the Buyer collects the Equipment from CALP premises or CALP delivers the Equipment to the Buyer's premises).

8.3 The Buyer is responsible for taking out and maintaining insurance for the full replacement value of the Equipment in the event CALP is storing the Equipment on behalf of the Buyer.

8.4 CALP accepts no responsibility for any loss or damage to the Equipment in its possession in the event the Buyer delays delivery of the Equipment beyond the date of delivery set out in the Purchase Order of the Buyer (or as communicated to CALP at first instance).

## **9 TITLE**

9.1 Legal and equitable title in and to the Equipment will only pass to the Buyer upon receipt of payment in full (without set off, counterclaim or any deduction) by CALP of the full purchase price for the Equipment and all amounts which are owing by the Buyer in relation to the Equipment (including any interest, freight, insurance or other charges).

9.2 The Buyer agrees that:

(a) it grants a first ranking security interest and purchase money security interest in all Goods supplied to it for the purposes of the PPSA, as security for all Amounts Owing now or in the future, which is a continuing security despite any transfer of title, settlement of account or other matter or thing until a final discharge is given to the Buyer, and that it waives the right to receive any verification statement;

(b) it will execute such further documents and take steps required by CALP to register a financing statement or financing change statement in relation to the Goods on the Personal Property Securities Register or otherwise perfecting CALPs interest in the Goods, including any agreements required from other secured parties, and will not take possession of any Goods unless CALP has previously registered a financing statement designating a purchase money security interest over them; and

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

9.3 Receipt by CALP of any cheque, other bill of exchange or electronic funds transfer will not be deemed to be good payment until the same has been honoured or cleared and is available for use by CALP.

9.4 Until title passes to the Buyer in accordance with these Terms, the Buyer must:

(a) hold the Goods, and any property into which the Equipment is incorporated, as bailee of CALP;

(b) keep all Goods clearly identified as the property of and subject to a first ranking security interest in favour of CALP and reflect the same in its financial statements; and

(c) not Deal, or purport to Deal, with the Goods or allow them to be removed from its premises (other than the sale of any Goods other than Equipment in the ordinary course of business, or any subsequent ranking security interest approved by CALP).

9.5 In addition to any other rights granted to CALP, if:

9.6 an Insolvency Event occurs in relation to the Buyer before title passes to the Buyer in accordance with these Terms;

(a) any Amount Owing remains unpaid 30 days after the due date on which it first became due and payable; or

(b) the Buyer breaches these Terms or the terms of the Purchase Agreement,

then CALP may retake possession of all Goods wherever located and the Buyer authorises CALP to enter upon the premises of the Buyer or any third party for that purpose and then to recover the cost of that repossession from the Buyer as a debt due.

## **10 RETURN OF EQUIPMENT RECEIVED IN ERROR OR DEFECTIVE CONDITION**

10.1 The Buyer may have rights or remedies under the Australian Consumer Law. This clause 10 is in addition to those rights or remedies and does not limit, exclude or modify those rights in any way.

10.2 If the Buyer receives any Equipment in error or defective condition, the Buyer must notify CALP in writing (email, facsimile, letter, text message) including accompanying picture or video footage within 3 Business Days of receipt of such Equipment, otherwise the Buyer will remain liable for payment for that Equipment in full without deduction, set-off or counterclaim.

10.3 Equipment (including spare parts) that is returned to CALP due to incorrect ordering, quantities or specifications will be subject to re- stocking fees of 29% (twenty nine per cent per annum) of the invoice price plus, freight charges and all other costs associated with returning the Equipment (or parts thereof) to CALP or the original supplier.

10.4 Provided clause 10.2 is strictly complied with, CALP agrees (at CALPs option) to either repair, replace, pay the cost of or procure, the repair or replacement of Equipment delivered in defective condition subject to such Equipment having been properly handled and used by the Buyer in accordance with the manufacturer's instructions and CALPs instructions. If in performing these obligations CALP determines that any Equipment (including spare parts) is required to be returned to CALP, CALP will arrange for the return of the relevant Equipment. CALP will pay for the cost of all third party transport arranged by CALP under this clause.

10.5 The Buyer will be responsible for all other costs associated with notifying CALP and returning Equipment (including spare parts) delivered to Buyer in defective condition.

10.6 Equipment will not be accepted for return after 10 Business Days of delivery or without prior notice having been given strictly in compliance with clause 10.2.

## **11 RETURN OF EQUIPMENT FOR OTHER REASONS**

11.1 CALP may in its discretion accept Equipment returned by the Buyer. Any deposit paid is non-rendundable and all transport costs incurred for the return of Equipment will be at the Buyer's expense.

## **12 REPRESENTATIONS AND WARRANTIES**

12.1 CALP gives no warranties as to the Equipment or Services supplied by CALP except to the extent expressly set out in these Terms.

12.2 The Buyer agrees that before accepting the Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying upon the skills or judgment of CALP or any person purporting to act on its behalf. The Buyer acknowledges that, to the extent permitted by law, CALP or a person purporting to act on its behalf has not made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the suitability, condition and fitness for purpose of the Equipment or any other matter. Subject to clauses 13 and 17.1, CALP gives no warranty that the Equipment is suitable for the Buyer's purpose. The Buyer acknowledges and agrees that the Buyer is responsible for determining the suitability and fitness for purpose of the Equipment and that CALP has no responsibility to the Buyer for doing so.

## **13 STATUTORY RIGHTS**

13.1 Clause 13.2 only applies if the Buyer is a consumer for the purposes of section 3 of the Australian Consumer Law.

13.2 The following text has been included in accordance with section 102 of the Australian Consumer Law:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.*

*To the extent our goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then we may limit our liability as we have done so in clause 17 of these Terms to repair or replacement of goods or the payment of the cost of repairing or replacing goods, or supplying services again or payment for the cost of supplying services again, in accordance with section 64A of the Australian Consumer Law.*

#### **14 INSTALLATION OF EQUIPMENT**

14.1 Unless otherwise specified or agreed by CALP in writing, the Buyer is responsible for receiving, inspecting, testing, storing, installing, starting up and maintaining all Equipment.

14.2 Pricing for Equipment or Services **excludes** any installation costs unless agreed in writing by CALP.

14.3 It is the responsibility of the Buyer to ensure all Equipment supplied and installed complies with all relevant safety laws, regulations, standards and requirements ("Safety Requirements") from delivery which includes during the installation, commissioning and operational periods. Any additional costs to comply with any Safety Requirements are at the Buyer's expense. To the maximum extent permitted by law, CALP is not liable for any, Claims or Loss relating to non-compliance with any Safety Requirements once the Equipment has been delivered, nor for any delay, failure or inability to complete installation.

14.4 CALP can provide installation reports for assistance and recommendation on Equipment installation. Any materials, advice or recommendations supplied by CALP in relation to the installation of Equipment are a guide only, must not be relied on by the Buyer and do not form part of the Purchase Agreement or give rise to any warranty.

14.5 The Buyer must provide reasonable and proper access to the Buyer's premises for the purposes of any delivery, installation or Services to be performed by CALP. In the event that CALP is unable to gain access or access is delayed, CALP reserves its rights to recover the cost of any delay from the Buyer. Indicative recovery costs are \$1.50/km plus GST for travel and \$120 hour standing time plus GST

#### **15 PROPRIETARY RIGHTS**

15.1 CALP retains all rights, title and interest in any trademark, copyright, patent, design and any other intellectual property or proprietary right in or connected to any Equipment or Services and to any reports, specifications or materials prepared or made available by CALP.

#### **16 WARRANTY**

16.1 The warranty provisions in this clause 16 are only applicable if the Buyer completes, signs and returns the Warranty Registration Form to CALP.

16.2 Unless otherwise stated, CALP warrants to Buyer that if any manufacturing defects occur in the Equipment as a result of poor workmanship or material within one year from the day of delivery or within 1000 hours after installation, whichever falls first ("Warranty Period"), defective parts will be replaced in accordance with this clause 16.

16.3 Should any manufacturing defects be noted in parts of the product within the Warranty Period, CALP will replace such parts with new ones at no cost to the Buyer, excluding any freight costs, provided that:

(a) defective parts are returned to CALP or a report describing such defective parts is submitted to CALP in writing;

(b) CALP recognises the fault in workmanship or material through subsequent investigation; and such defects are determined not to be the result of mishandling or misuse of the Equipment.

16.4 The Equipment must be returned to CALP for warranty repairs to be undertaken. If the Buyer cannot return the Equipment to a CALP local branch, CALP reserves the rights to impose additional charges, including travel, labour, freight and accommodation charges, required to undertake the warranty repairs to the Equipment.

16.5 This warranty against manufacturing defects under this clause 16 does not cover the items below even if defect arises within the Warranty Period:

(a) natural fading in colour or exfoliation in plating;

(b) noise and vibration during operation which have no bearing on performance;

(c) damage caused by operating the unit in disregard of specifications provided by CALP;

(d) damage caused by using parts, oil, lubricants, and expendables other than those specified in instruction manual relating to the Equipment;

(e) damage caused by improper handling, improper operation, or inadequate maintenance or custody;

(f) damage caused as a result of modifying the Equipment which affects the Equipment's performance and when such modification was made without prior approval of CALP;

(g) damage caused by war, riot, fire, flood, acts of God, or other causes beyond the control of CALP;

(h) expendables such as carbon brushes, light bulbs, fuses, batteries, V-belts, nuts and bolts, vinyl or rubber parts, elements, packings, and gaskets; and

(i) all other direct and indirect costs and expenses resulting from the above.

16.6 All Claims in relation to manufacturing defects filed subsequent to expiration of the Warranty Period will not be accepted.

16.7 To the extent permitted by law, this warranty against manufacturing defects is in lieu of all other warranties, guarantees, or agreements, whether expressed or implied, is the sole and exclusive remedy for the rectification of manufacturing defects, and no person, agent, distributor, or dealer is authorised to change, modify, or extend the terms of this warranty in any manner whatsoever without CALP's prior written approval.

16.8 Notwithstanding the above, the parties acknowledge that extended warranty for manufacturing defects may be available and the Buyer may purchase an extended warranty on for manufacturing defects in respect of the Equipment with an extended warranty provider notified by CALP and on the terms and conditions provided by CALP.

#### **17 LIMITATION OF LIABILITY**

17.1 Any limitation on a party's liability or ability to exercise a right under these Terms only operates to the extent permitted by law, and nothing in these Terms purports to exclude, restrict or modify, or have the effect of excluding, restricting or modifying, any condition, warranty or guarantee implied or imposed by legislation (including the Australian Consumer Law and any other State or Territory legislation concerning consumer protection, fair trading or the sale of goods or services) ("Implied Term") or the exercise of a right conferred by such a guarantee, condition or warranty, where to do so would have the effect of rendering the relevant provision in the Purchase Agreement void or otherwise unenforceable.

17.2 Subject to clause 17.1:

- (a) all implied terms and any other conditions or warranties otherwise implied by law are excluded from these Terms;
- (b) CALP's liability for a breach of any implied term, condition or warranty of the kind referred to in clause 17.1, is limited, at CALP's option, to:
- (i) the replacement of the Equipment or Services;
  - (ii) the re-supply of equivalent Equipment or Services; or
  - (iii) the payment of the cost of replacing the Equipment or Services or acquiring equivalent Equipment or Services; and
- (c) to the maximum extent permitted by law, CALP's maximum aggregate liability to the Buyer (whether in contract, tort (including negligence), for breach of warranty, under statute, under indemnity, in equity or otherwise) in connection with or arising out of the Purchase Agreement will not in any circumstances exceed the aggregate price of the Equipment or Services purchased by the Buyer.
- 17.3 Notwithstanding any other provision of the Purchase Agreement (but subject to clause 17.1 of these Terms), to the maximum extent permitted by law:

(a) CALP will not be liable to the Buyer or any third party for any exemplary or punitive damages, indirect or consequential Loss, loss of revenue, loss of production, loss of goodwill, loss of expected savings, opportunity costs, loss or reduction of goodwill, damage to reputation and loss or corruption of data regardless of whether any or all of these things are considered to be indirect or consequential Losses or damage, in contract, tort (including negligence), in equity, under any statute or otherwise arising from or related in any way to the Purchase Agreement or its subject matter;

(b) the Buyer may only recover once for the same Loss;

(c) the Buyer cannot make a Claim against CALP to the extent that the subject of a Claim is made good or is compensated for without cost to the Buyer;

(d) the Buyer cannot make a Claim against CALP to the extent the Buyer or other party fails to reasonably mitigate their Loss in respect of the Claim; and

(e) any Claim by the Buyer must be reduced proportionally to the extent any Loss, damage, Liability, Claim or expense is caused, or contributed to, by the acts, omissions or negligence of the Buyer or any of their respective Representatives.

17.4 CALP accepts no responsibility or liability for any loss or damage arising out of or in connection with any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused by:

(a) the use or operation of the Equipment by any person;

(b) improper handling, improper operation or inadequate maintenance or custody of the Equipment; and/or

(c) any modifications to the Equipment without the prior approval of CALP

## **18 INDEMNITY**

18.1 The Buyer must indemnify and hold CALP harmless from and against all Liability, costs, losses and damages (including Claims arising from any action brought by any person), arising in whole or in part from:

(a) the Buyer's or its Representatives' mishandling or misuse of, negligence or recklessness associated with, the Equipment, including any use of Equipment outside of its indicated uses or the manufacturer's guidelines;

(b) any misrepresentation, misstatement or similar act by the Buyer or its Representatives in relation to the Equipment;

(c) any modification to the Equipment made or allowed by the Buyer or its Representatives (including any modifications made by CALP in accordance with the Buyer's or its Representatives' specifications, instructions or directions);

(d) any loss of, damage to or destruction of the Equipment, irrespective of how the loss, damage or destruction is caused; and

(e) the Buyer's breach or repudiation of the Purchase Agreement.

(f) Any act or omission of the Buyer relating to or arising out of the Purchase Agreement

## **19 FORCE MAJEURE**

19.1 If CALP's supply or business is interrupted or restricted as a result of any shortage of supply in goods or materials, failure by a supplier or manufacturer to deliver goods or supply services, strike, lockout, industrial dispute, war, riot, civil disorder, fire, explosion, flood, accident, plant breakdown, government intervention or any other cause beyond CALP's reasonable control CALP is entitled to suspend, reduce and/or cancel delivery of Equipment or performance of Services during such period of interruption or restriction without liability to the Buyer or any third party.

19.2 Either party will be entitled by giving written notice to the other to terminate any agreement or contract under these Terms without prejudice to any of their accrued rights should such period of interruption or restriction under clause 19.1 continue for more than 90 days.

## **20 PERMITS AND APPROVALS**

20.1 The Buyer warrants that it holds all licences, permits and approvals necessary to purchase and use the Equipment and that no restriction of any kind prevents the Buyer from entering into any agreement or arrangement for the purchase of the Equipment.

## **21 TERMINATION**

21.1 CALP may terminate the Purchase Agreement immediately by notice to the Buyer if:

(a) becomes unable to lawfully perform the Purchase Agreement;

(b) the Buyer breaches any of its obligations under the Purchase Agreement with CALP and does not rectify the failure (where the failure is rectifiable) within 5 Business Days of being given notice of that breach; or

(c) the Buyer suffers an Insolvency Event.

Termination of the Purchase Agreement will not prejudice CALP's right to retain all monies paid, call-up any monies unpaid and take immediate possession of any Equipment held by the Buyer and will be without prejudice to any other rights of CALP.

## **22 RECOVERY OF COSTS**

22.1 The Buyer must pay all Losses, costs and expenses (on a full indemnity basis) incurred by CALP or its solicitors, legal advisers, recovery agents and other parties acting on CALP's behalf in exercising or enforcing CALP's rights and remedies under the Purchase Agreement and in respect of any action taken with respect to or instituted against the Buyer (or being considered) whether for debt, indemnity, Loss, damages, repossession of any Equipment or otherwise.

## **23 GENERAL PROVISIONS**

23.1 If any part of this Purchase Agreement becomes void or unenforceable in a jurisdiction for any reason then that part will be severed in respect of that jurisdiction only with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

23.2 The Purchase Agreement is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

23.3 As security for the obligations and liabilities of the Buyer under the Purchase Agreement, the Buyer charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature (whether tangible or intangible) held in any and all real property and any other assets. Without limiting the generality of the charge in this clause 23.3, the Buyer agrees, on request by CALP, to execute any documents and do all things necessary required by CALP to register a mortgage security or other security interest over any real property or other asset. The Buyer must indemnify CALP on an indemnity basis against all costs and expenses incurred by CALP in connection with the preparation and registration of any such mortgage or security documents, and any stamp duty, registration fees or charges levied in respect of the security created by this clause 23.3. The Buyer also consents unconditionally to CALP lodging a caveat or caveats noting its interest in any real property or other caveatable property.

23.4 The Purchase Agreement issued to the Buyer, including these Terms, comprises the entire agreement between the parties. No additional terms and conditions or warranties apply to the purchase of the Equipment unless agreed in writing by CALP.

23.5 The Buyer acknowledges that the neither CALP or any person acting on CALP's behalf has made any representation or other inducement to it to enter into the Purchase Agreement and that it has not entered into the Purchase Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained in this Purchase Agreement.

23.6 CALP may at any time vary these Terms by giving the Buyer 14 days' written notice. Written notice of a variation to the Terms will be made by ~~notice on CALP's website, and to the extent possible,~~ email to the Buyer. The variation to the Terms will take effect on the date which is 14 days after the ~~notice is published~~ email is sent by CALP or sent to the Buyer, unless the Buyer provides written notice of an objection to the variation within 14 days of the date of the notice. Any other variation of the Purchase Agreement must be agreed in writing by CALP and the Buyer.

23.7 CALP may collect personal information about the Buyer. CALP may use the Buyer's personal information to provide services to the Buyer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Buyer or third parties and for marketing (including social media platforms) and client relationship purposes. If the Buyer does not provide all personal information required by CALP, CALP may not be able to sell the Equipment or provide the associated services to the Buyer. CALP may disclose the Buyer's information to CALP's service providers and contractors from time to time to help provide and market CALP's services to the Buyer. Generally, the Buyer has a right to access personal information CALP holds about the Buyer. The Buyer consents to and authorises CALP to use and disclose the Buyer's personal information in accordance with this clause 23.7.

23.8 Any document which by the Purchase Agreement may be given by CALP may be served or rendered by leaving it at or posting it to the address of the Buyer as stated in the Purchase Agreement or last notified by the Buyer in writing to CALP and will be deemed to have been served or rendered at the time of leaving or, if posted, on the Business Day following the day of postage and any notice may be signed by an officer, manager or solicitor of CALP on behalf of the Buyer.

23.9 No delay or omission to exercise any right, power or remedy accruing to CALP upon any continuing breach or default under the Purchase Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of CALP to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

23.10 The Buyer acknowledges and agrees that the person signing the Purchase Agreement for and on behalf of the Buyer has

the authority of the Buyer to enter into the Purchase Agreement on the Buyer's behalf and is empowered by the Buyer to bind the Buyer to the Purchase Agreement. The Buyer indemnifies CALP against all losses, costs and claims incurred by CALP arising out of the person so signing the Purchase Agreement not in fact having such power and/or authority.

23.11 This edition of the Terms replaces and supersedes all previously issued terms and conditions of purchase by CALP.

23.12 CALP is in no way obliged to sell any Equipment to the Buyer and may refuse to sell the Equipment to the Buyer at its absolute discretion, including but not limited to, if the Buyer fails to provide adequate identification or if in the opinion of CALP, the Buyer's safety is put at risk by providing them with such Equipment.

23.13 Any provision of the Purchase Agreement which is capable of having effect after the expiry or termination of these Terms (including clauses 1, 3.4, 4, 9, 16, 18, 21 and this clause 23) survive and remain in full force and effect.

23.14 This Purchase Agreement may consist of a number of copies, each signed by one or more parties to the Purchase Agreement. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement.

23.15 Unless otherwise specified or agreed by CALP in writing, the Buyer is responsible for receiving, inspecting, testing, storing, installing, starting up and maintaining all Equipment.

23.16 The Buyer irrevocably and unconditionally appoints CALP (or any CALP nominee) as its attorney in all things to give effect to the Buyer's obligations arising under the Purchase Agreement.

23.17 The indemnities given by the Buyer pursuant to the Purchase Agreement are continuing obligations, independent from the other obligations of the parties and continue after the Purchase Agreement ends. It is not necessary for CALP to incur expense or make payment before enforcing a right of indemnity under the Purchase Agreement.

23.18 The rights, remedies and powers of the parties under the Purchase Agreement are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

23.19 If the Purchase Agreement is terminated then the parties are released from the obligation to continue to perform the Purchase Agreement and each party will retain any rights it may have against the other party in respect of any accrued Liability or any breach or non-observance of the Purchase Agreement arising or occurring prior to the expiration or termination of the Purchase Agreement.