

Terms and Conditions

1. Definitions

1.1

“Agreement” means the Agreement referred to in clause 2.

“Customer” means the person, firm, organisation, partnership, corporation or other entity (including a trust) hiring the Equipment from REX as identified in the Credit Application or Hire Schedule.

“Commencement” means the date and time when the Customer takes Possession of the Equipment.

“Competent Person” means a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

“Consequential Loss” means any consequential, indirect, exemplary or punitive damage (production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties) whether caused by or in relation to breach of contract or statute, or in tort (including negligence) or equity.

“Equipment” means any items of plant, equipment or tooling owned by REX which the parties agree will be provided by way of hire from REX to the Customer from time to time under this Agreement, including without limitation any general and specialist tools forming part of any tool-store provisions, any facilities such as portable sheds, ablutions or tool-store, any equipment cross-hired by REX from a third party supplier and hired to the Customer, and any general plant and equipment forming part of REX's fleet.

“Force Majeure Event” means any of:

- (a) an act of God;
- (b) the outbreak of hostilities (whether accompanied by any formal declaration of war), riot, civil disturbance or acts of terrorism;
- (c) the act of any government or competent authority (including the cancellation or revocation of any approval, authority or permit);
- (d) fire, explosion, flood, inclement weather, or natural disaster;
- (e) the declaration of a state of emergency, the invocation of martial law or government action, having an effect on commerce generally;
- (f) industrial action (including strikes and lock-outs) that is of a widespread nature affecting REX personally or the industry or sector of which the Seller is a part (whether in a vertical sense or horizontal sense);
- (g) the default of any suppliers under any material contracts to which the Seller is a party; or
- (h) any other cause, impediment or circumstance beyond the reasonable control of any party;
- (i) which could not be taken into account on the formation of this agreement;
- (ii) whose consequences could not be avoided in this agreement; and
- (iii) which makes performance of this agreement impossible, not merely more onerous or uneconomic

“Hire Charges” means the amount shown on the Hire Schedule or invoice, payable by the Customer to hire the Equipment.

“Hire Schedule” means a document in such form as REX shall require, setting out the terms of the hire of Equipment, including the particulars of the Equipment, the day rate to be charged by REX, the Term of Hire and such other information as REX may decide to include.

“Hire Term” means from Commencement until the end of the period shown on the Hire Schedule. The Hire Term may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if REX agrees. REX may issue an amended Hire Schedule for any extension of the Hire Term. Any Hire Term shall not be any longer than 18 months from the date the Customer takes Possession of the Equipment.

“Insolvency Event” means:

- (a) in relation to a company:
 - (i) the company becomes insolvent within the meaning of section 95A of the Corporations Act;
 - (ii) a resolution is passed for the winding up of the company (other than for the purposes of reconstruction or amalgamation on terms which have been approved in writing by the other parties);
 - (iii) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all of the property of the company;
 - (iv) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all of the business or assets of the company;
 - (v) the company makes any composition or arrangement or assignment with or for the benefit of its creditors;
 - (vi) the company or any creditor appoints a voluntary administrator or a resolution is passed for that Party to execute a deed of company arrangement;

- (vii) the company ceases to carry on its business; or
 - (viii) the company admits in writing that it is, or is declared to be, insolvent or unable to pay all of its debts when they become due and payable;
- (b) in the case of an individual, any of the following:
- (i) a receiver or a trustee for creditors or in bankruptcy is appointed to any of his property;
 - (ii) he proposes or enters into an arrangement, composition or compromise with or for the benefit of creditors or any class of them;
 - (iii) he stops or suspends, or threatens to stop or suspend, the payment of all or a class of his debts or the conduct of all or substantial part of his business;
 - (iv) he is unable to pay all of his debts as they fall due or is presumed to be insolvent under any applicable law.

"Intellectual Property" means all intellectual property rights (whether registered or unregistered) including in respect of:

- (a) business names;
- (b) domain names;
- (c) trade marks;
- (d) confidential information; and
- (e) patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, Know How, logos, designs and copyright.

"Know How" means the information or know-how owned by or in the possession or control of Rex relating to its business, the Equipment, its systems, technology and affairs (and whether written or unwritten) including:

- (a) financial, technological, strategic or business information, concepts, plans, strategies, directions or systems;
- (b) research, development, operational, legal, marketing or accounting information, concepts, plans, strategies, directions or systems;
- (c) technology, inventions, discoveries, improvements, processes, formulae, techniques, manuals, instructions, source and object codes for computer software, intellectual property rights and technical and historical information relating to them; and
- (d) customer and supplier information.

"Invoice" means any invoice issued by Rex to the Customer pursuant to the Agreement.

"Possession" means is considered to have occurred when the Equipment has been:

(In respect of Possession taken by the Customer:)

- (a) collected from REX's premises by a courier organised by the Customer; or
- (b) collected from REX's premises by the courier organised by REX; or
- (c) collected from REX's premises by a representative of the Customer; or
- (d) delivered to the Customer's Premises by REX; or

(In respect of Possession taken by Rex:)

- (a) returned to Rex's premises; or
- (b) actual physical possession is obtained by Rex, or any party engaged by Rex on its behalf.

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

"PPSR" means the personal property security register created pursuant to the PPSA.

"Premises" means any property, premises or location from which the Customer conducts its business, or otherwise occupies, controls or has access to.

"REX" means Rex Industrial Pty Ltd as trustee for the Rex Industrial Discretionary Trust ABN 79 191 320 371 and all related entities and body corporate or assigns.

"Security Interest" has the meaning given to that term in section 12 of the PPSA

"Stand Down" means any part-period of a Hire Term where the Customer has Possession of the Equipment and where the Customer requests Rex, and Rex agrees in writing to, provide a discounted rate of Hire for that period in which the Equipment is not being used.

"Terms and Conditions" means these terms and conditions.

1.2 In this Agreement, unless the context indicates a contrary intention:

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (d) A reference to includes or including should be construed without limitation.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

2. Agreement

- 2.1 A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- 2.2 These Terms and Conditions, as well as the provisions of any credit application, Hire Schedule, and invoice, set out the terms upon which Rex shall supply and goods and services, to the Customer on Credit. For the sake of clarity, no documents issued by or on behalf of the Customer shall form part of any Agreement between Rex and the Customer unless agreed to in writing by Rex.

3. Payment Terms

- 3.1 The Customer must pay to REX the Hire Charge as follows:
 - (a) If the Customer has a cash on delivery account with REX, payment for the first day of Equipment hire is payable before Possession of the Equipment is taken and any additional hire charges or damage will be payable on demand.
 - (b) If the Customer has a credit account with REX, invoices are payable according to the terms of your account as set out in any Hire Schedule or Invoice.
- 3.2 REX is entitled to vary the Hire Charges during the term of this Agreement as required
- 3.3 Where applicable, any Invoice issued by REX to the Customer pursuant to this Agreement shall constitute a payment claim pursuant to the *Building and Construction Industry Security of Payment Act 2002* (VIC).

4. Terms of Hire

- 4.1 Each hire is in accordance with this Agreement and commences from:
 - (a) The date of this Agreement; or
 - (b) The date and time in which the Customer takes Possession of the Equipment;whichever is earlier, and ends when REX regains Possession or control of the Equipment.
- 4.2 The minimum Hire Term is one (1) day and the Customer shall be liable to pay Rex the whole day's Hire Charge if returned earlier.
- 4.3 The maximum Hire Term is 18 months, after which the Customer must return the Equipment to Rex or make the Equipment available to Rex for collection (at the Customer's cost).
- 4.4 Rex may, but is not required to, offer the Customer with a discounted rate on any Hire Charges for Equipment that is hired for a weekly hire period or a contract hire period. Any such discounted rate will be at the sole discretion of Rex and is subject to clause 4.5 below.
- 4.5 Should the Customer fail to pay an Invoice that offers a discounted rate within the terms set out in the Invoice, Rex's offer of a discounted rate shall be immediately withdrawn and the Customer shall be liable to pay Rex the full daily rate of the Equipment, such amount will become payable by the Customer immediately.
- 4.6 The Customer agrees and accepts that, in addition to any Hire Charges, it is liable for, must pay REX, and fully indemnifies REX in relation to any and all freight, shipping or transport costs associated with, or incurred by, REX, in having the Customer take Possession of the Equipment.
- 4.7 The Customer may request that Rex agree to a Stand Down in respect of any Equipment that the Customer has taken, and maintains, Possession of. Any Stand Down shall only apply and be effective if agreed to by REX in writing and prior to the Stand Down.
- 4.8 During any agreed Stand Down, the Customer undertakes to refrain from using the Equipment. If the Customer uses the Equipment during any Stand Down, Rex reserves the right to terminate the Stand Down immediately and any discount offered by Rex shall be immediately withdrawn and cease to have effect from the time in which the Customer commenced using the Equipment during the Stand Down.
- 4.9 Any Stand Down issued by Rex, including the rate applicable during the Stand Down period, shall be at Rex's sole discretion. The Customer accepts and agrees that:

- (a) Rex reserves the right to vary any agreed pricing in respect of any hire of Equipment if, at Rex's sole discretion, there is an increase in Rex's cost to supply the Equipment; and
- (b) Prior to the customer taking Possession of the Equipment and upon written notice to the Customer, Rex may terminate or cancel any Agreement to provide Equipment for hire where the Equipment is unavailable for any reason whatsoever

4.10 The Customer acknowledges, accepts and agrees that,

- (a) taking Possession of the Equipment confirms acceptance of the Hire Charges which will be provided by Rex prior to the hire in writing or on the Hire Schedule at the time of Possession; or
- (b) where the Customer requests the hire of Equipment from Rex on an urgent basis and it is not practicable for Rex to provide Hire Charges on a Hire Schedule or otherwise in writing prior to the Customer taking Possession of the Equipment that;
 - (i) Rex will advise Hire Charges as soon as practicable via text message or email to the Customer; and;
 - (ii) should the customer not accept notified Hire Charges, the Customer agrees to return the Equipment to Rex's premises at its own expense, by 8am the next business day; and
 - (iii) agrees to pay 50% of the advised Hire Charges if returned by 8am the next business day, or
 - (iv) agrees to pay the full Hire Charges for the entire Hire Term if not returned by 8am the next business day.

5. Damage to or Failure of Equipment

5.1 If, during the Hire Term, the Equipment is damaged, breaks down, ceases to operate or function, the Customer must:

- (a) notify REX immediately;
- (b) stop using the Equipment immediately; and
- (c) not take any steps to repair the Equipment without REX's express written consent.

5.2 If, during the Hire Term, the Equipment breaks down or ceases to operate or function and where Rex is at fault:

- (a) Rex will take steps to repair the Equipment as soon as reasonably practical and at no cost to the Customer;
- (b) Where Rex considers, in its sole discretion, that repair is not reasonably practicable, Rex will endeavour to provide the Customer with a replacement item of similar kind;
- (c) Where repair or replacement of the non-functioning Equipment is, at Rex's sole discretion, not reasonably practicable, Rex is entitled to terminate any Hire Term immediately by written notice to the Customer; and
- (d) Rex will collect the non-functioning Equipment, and/or deliver a replacement item of Equipment, at no cost to the Customer.

5.3 If, during the Hire Term, the Equipment breaks down, ceases to operate or is damaged, and where the Customer is at fault:

- (a) Where the Equipment is rendered wholly inoperable and cannot, at Rex's sole discretion, be repaired to the state in which the Equipment was when the Customer took Possession of the Equipment, the Customer indemnifies Rex and agrees and undertakes to pay to Rex the current list price of the Equipment;
- (b) Where the Equipment wholly or partially inoperable and is, at Rex's sole discretion, capable of being repaired, the Customer indemnifies Rex and agrees and undertakes to pay Rex the current list price of any replacement parts plus Rex's labour charges; and
- (c) The Customer indemnifies Rex and agrees and undertakes to pay Rex any amounts charged by or to Rex in respect of the collection of the Equipment.

6. Loss or Theft of Equipment

6.1 If, during the Term of Hire, the Equipment is lost or stolen, the Customer:

- (a) Must report the matter to the police immediately;
- (b) Must notify REX immediately and provide REX with a copy of the police report; and
- (c) The Customer indemnifies Rex and agrees and undertakes to pay Rex the current list price of the Equipment plus the cost for hire up until the date of the police report or written notification by the Customer to Rex (whichever is the latter).

6.2 If, during the Hire Term, the Equipment is lost or stolen, and subsequently located and returned to Rex, Rex will be entitled to charge the Customer, and the Customer indemnifies Rex and will be required to pay Rex, Hire Charges from the date on which the Customer takes Possession of the Equipment to the date on which the Equipment is returned to Rex at the rate set out by Rex in any Hire Schedule, plus damages.

6.3 Any payment received from Rex in accordance with this clause 6 shall not constitute a sale of the subject Equipment by Rex to the Customer.

7. REX's Obligations

REX will:

- (a) make the Equipment available to the Customer for the Hire Term;
- (b) subject to the terms of this agreement, allow the Customer to use the Equipment for the Hire Term;
- (c) ensure that, at the time of collection by, or delivery to, the Customer, the Equipment is in working order. In this regard, the Customer acknowledges that Customer has inspected the Equipment and accepts the Equipment as it is with all defects (if any);
- (d) ensure any calibration is current upon the Customer taking Possession;
- (e) ensure electrical safety tagging is current upon the Customer taking Possession of the Equipment; and
- (f) provide operation and safety information for Equipment upon written request by the Customer.

8. Customer's Obligations

8.1 The Customer must:

- (a) satisfy itself at Commencement that the Equipment is suitable for the purpose required;
- (b) ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;
- (c) operate the Equipment safely, strictly in accordance with the law (including but not limited to Occupational Health and Safety laws) ensure that the Equipment is operated by a Competent Person, only for its intended use, and in accordance with any manufacturer's instructions.
- (d) advise REX if you require any further instruction on the operation and safe use of the Equipment, prior to use of the Equipment;
- (e) safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify REX in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- (f) at its own expense, keep Equipment electric test and tag current for the duration of the hire
- (g) accept full responsibility for any breakage or damage that is not considered reasonable wear and tear;
- (h) remain responsible for the care and safekeeping of the Equipment until collected by or delivered back to REX,
- (i) return the Equipment to REX undamaged and in reasonable condition upon completion of the Hire Term. The Customer may be charged a cleaning fee for any excessive cleaning required by REX at Rex's sole discretion;
- (j) pay to REX the Hire Charges and any other applicable costs and charges under this Agreement.
- (k) immediately stop using and report to REX any fault, expired calibration or damage to the Equipment;
- (l) assist and co-operate fully and promptly with REX and/or its insurer in the investigation, settlement or defence of any claim or matter relating to a Hire Schedule on which the Customer is named;
- (m) keep the Equipment in its sole possession and in a safe and proper location at the delivery address or at any other place as may be approved in writing by Rex from time to time. The Customer must not remove the Equipment from the delivery address except in the ordinary course of business and must immediately advise Rex of the whereabouts of the Equipment upon request.
- (n) allow Rex to have access to the Premises for the purpose of inspecting the Equipment and ensuring that this agreement is being complied with.
- (o) allow Rex to affix any markings on the Equipment to indicate that the Equipment is Rex's property.

8.2 The Customer must NOT:

- (a) tamper with, damage or attempt to repair the Equipment;
- (b) lose or part with possession of the Equipment;
- (c) rely upon any representation relating to the Equipment or its operation other than those contained in this Agreement;
- (d) alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Equipment, or in any other manner interfere with the Equipment;
- (e) allow any person to operate or drive the Equipment if the person:
 - (i) is not a Competent Person, or suitably qualified to operate the Equipment
 - (ii) does not hold a suitable licence to drive that class of Equipment; or
 - (iii) is affected by drugs and/or alcohol.
- (f) exceed the recommended capacity limits of the Equipment.

9. Risk and Title

- 9.1 Title to the Equipment remains with REX and shall not, under any circumstances, pass to the Customer.
- 9.2 Unless otherwise authorised by REX in writing, the Customer shall not, under any circumstances assign, transfer, sell, lease, sub-lease, grant any option, or attempt to assign, transfer, sell, lease, sub-lease or grant any option, over the Equipment.
- 9.3 Risk in the Equipment passes to the Customer when the Customer takes Possession of the Equipment.

10. Security/Charges

- 10.1 In order to secure any and all of its past, present and future obligations owed to REX, the Customer charges, by way of a charge, in favour of REX all current and future rights, title and interest in any current and future real and personal property.
- 10.2 The Customer consents to REX lodging a caveat in respect to the charge given in clause 10.1 above over any current and future real property in which the Customer has any rights, title or interest.

11. PPSA

- 11.1 The Customer acknowledges, agrees and accepts that:
- (a) this agreement provides for or creates a Security Interest.
 - (b) REX may register its Security Interest on the PPSR.
 - (c) Without limiting this clause 11.1, REX is not obliged to give any notice under the PPSA (including notice of a verification statement) to the Customer unless the notice is required by the PPSA and cannot be excluded.
 - (d) To the extent that chapter 4 of the PPSA would otherwise apply to enforcement by REX of any Security Interest:
 - i) to the extent permitted by section 115(1) of the PPSA, REX need not comply with sections 125, 132(3)(d), 132(4);
 - ii) sections 142 and 143 of the PPSA are excluded; and
 - iii) to the extent permitted by section 115(7) of the PPSA, REX need not comply with sections 132 and 137.
 - (e) The Customer consents to the waiver of the requirement for notice under any other provision of the PPSA that REX may notify the Customer after the date of this Deed and waives any rights it has to receive that notice.
 - (f) The Customer shall pay and bear REX's costs of registering, maintaining or amending any Security Interest on the PPSR.
- 11.2 If the Customer sub-leases any Equipment to any third party whatsoever, the Customer:
- (a) acknowledges, agrees and accepts that any such sub-lease may only be done with the express written consent of REX;
 - (b) undertakes to do all things necessary to:
 - i) perfect its own Security Interest, including but not limited to registering such Security Interest on the PPSR, no later than five (5) business days thereafter, and
 - ii) ensure that such Security Interest created in favour of the Customer in respect of any sub-lease is subject to, and second in priority to, REX's Security Interest.

12. Indemnity

The Customer agrees to and hereby does indemnify REX and will keep REX indemnified against:

- (a) any claim, loss, damage, charge or expense that REX may suffer or incur, whether directly or indirectly, as a consequence of any failure by the Customer to comply with its obligations owed to REX in accordance with this, or any other agreement. This indemnity includes but is not limited to any legal fees on a solicitor/client basis;
- (b) any wrongful, unlawful or negligent act or omission by the Customer and its employees, contractors, agents, assigns or licensees;
- (c) any injury, loss, damage or death incurred by either the customer, REX, or any of their employees, contractors, agents or assigns, or any other person, in respect of any wrongful, unlawful or negligent act or omission by the Customer (and its employees, contractors, agents, assigns or licensees).
- (d) Any loss that REX may suffer or incur, whether directly or indirectly, in the event that the Equipment, or any part thereof, is damaged, lost or stolen during the Term.

13. Interest

Any amount not paid by the Customer to REX in accordance with this Agreement will, at the discretion of REX, be subject to interest which shall be charged in accordance with section 2 of the *Penalty Interest Rates Act (Vic)* as applicable from time to time.

14. Intellectual Property

If any Intellectual Property is created, produced or otherwise generated by Rex whatsoever in the course of the conduct of its obligations under any Agreement with the Customer:

- (a) that Intellectual Property is, and shall always remain the property of Rex; and
- (b) the Customer agrees and undertakes to:
 - i) keep all aspects of that Intellectual Property confidential;
 - ii) protect and preserve its confidential nature and secrecy; and
 - iii) refrain from disclosing, or allowing/assisting the disclosure of, the Intellectual Property.

15. Limitation of Liability

15.1 Except where, to do so would contravene any statute, REX excludes:

- (a) all liability, whether arising at law or in equity or by virtue of any statute; and
- (b) all conditions, warranties or guarantees implied by custom, the general law or statute.

15.2 To the extent permitted by law, Rex's liability for any breach of such condition, warranty or guarantee is limited, at Rex's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption).

15.3 REX shall not be liable to the Customer for any Consequential Loss.

15.4 Rex's total aggregate liability to the Customer arising under or in connection with this agreement is limited to the total amount payable in respect of the Hire Charges.

15.5 Rex shall not be liable to the Customer whatsoever in relation to, or as a consequence of, any delay in the Customer taking Possession of the Equipment, whether that delay is Rex's fault.

16. Termination

16.1 REX may terminate this agreement with immediate effect if:

- (a) the Customer commits an Insolvency Event;
- (b) the Customer is in breach of this agreement in any way and that breach is capable of being rectified but the Customer fails to rectify that breach within two (2) business days of any written request by REX to do so; and
- (c) the Customer is in breach of this agreement in any way and that breach is not, at REX's sole discretion, capable of being rectified.

16.2 If this agreement is terminated by REX in accordance with clause 16.1 above:

- (a) any amount owed by the Customer to REX becomes immediately due and payable;
- (b) REX may enter the Customer's Premises to recover the Equipment,
- (c) The Customer consents to REX entering the Customer's Premises to recover the Equipment; and
- (d) The Customer will comply with any direction given by REX to enable REX to recover the Equipment.

17. Trustee

If the Customer is the trustee of a trust (whether disclosed to REX or not), the Customer warrants to REX that the Customer:

- (a) enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) has the right to be indemnified out of trust assets;
- (c) has the power under the trust deed to sign this agreement;
- (d) will not retire as trustee of the trust or appoint any new or additional trustee without advising REX; and
- (e) must give REX a copy of the trust deed upon request.

18. No Reliance

In entering into this Agreement and other than as set out elsewhere in this agreement, the Customer acknowledges, agrees and accepts that:

- (a) It has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person by or on behalf of REX;
- (b) REX makes no representations, warranties or covenants as to the condition, design, description or quality of the Equipment of that the Equipment is suitable or fit for a particular purpose, including but not limited the purpose for which the Customer intends to use it and
- (c) relied entirely on its own enquiries in relation to the subject matter of this Agreement.

19. Legal Advice

The Customer acknowledges, agrees and accepts that it has obtained, or has had the opportunity to obtain, legal advice in relation to the terms of this agreement.

20. Set Off

- 20.1 All payments required to be made by the Customer to REX under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
- 20.2 Any amount due to the Customer by REX from time to time may be deducted from any monies which may be or may become payable to the Customer by REX.

21. GST

Unless otherwise stated, all amounts payable by the Customer to REX in respect of any supply pursuant to this agreement are exclusive of GST. The Customer is liable for and must pay any GST to REX in addition to any other consideration payable to REX.

22. Force Majeure

- 22.1 Neither party to this agreement shall be liable to the other for any failure to perform any of the stipulations of this agreement (other than an obligation to pay money) caused by a Force Majeure Event.
- 22.2 Where a Force Majeure Event takes place, the party claiming this must immediately notify the other party of this and provide complete details of the Force Majeure Event.

23. Privacy Act

The Customer agrees to the terms of the Privacy Act 1988 authorisation contained in this the credit application form.

24. Assignment

- 24.1 The Customer must not assign any rights or obligations arising in respect of this or any agreement with REX without the prior written consent of REX.
- 24.2 REX may assign any rights or obligations arising in respect of any agreement with the Customer without the prior written consent of the Customer.

25. Entire Agreement

- 25.1 This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
- 25.2 Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement between the Customer and Rex, these terms and this agreement will constitute a variation of the original agreement whereby the terms of that agreement are deleted and replaced with the terms herein. Unless the terms of the original agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

26. Further acts

Each party must at its own expense promptly execute all documents and do, or use reasonable endeavours to cause a third party to do, all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

27. Governing law and jurisdiction

This Agreement is governed by the law of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

28. No authority to act

Except as otherwise set out in this Agreement, no party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party.

29. Severability

Each provision of this Agreement is individually severable. If any provision is, or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected and the legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

30. Successors and assigns

This Agreement continues for the benefit of, and binds, a successor in title of a party, including a person to whom a party's rights and obligations are assigned in accordance with the requirements of this Agreement.

31. Waiver or Variation

31.1 REX's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

31.2 REX's exercise of a power or right does not preclude:

- (a) its future exercise; or
- (b) the exercise of any other power or right.

31.3 Rex is entitled to vary these Terms and Conditions from time to time at its discretion. Notice is deemed given, and any amendments are taken to be effective from the time in which Rex notifies the Customer in writing, including by email, or when Rex publishes the amended terms on its website.

32. No Merger

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.