
Ken Landt Diesel Repairs – Terms & Conditions of Trade

1. Definitions

- 1.1 “Company” means Kalandt Pty Ltd T/A Ken Landt Diesel Repairs, its successors and assigns or any person acting on behalf of and with the authority of Kalandt Pty Ltd T/A Ken Landt Diesel Repairs.
- 1.2 “Customer” means the person/s buying the Parts (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Parts” means all Parts or Services supplied by the Company to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Parts’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by the Company to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Company to the Customer.
- 1.5 “Price” means the Price payable for the Parts and/or Equipment hire as agreed between the Company and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Parts/Equipment.
- 2.2 These terms and conditions may only be amended with the Company’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.
- 2.3 The Customer acknowledges and accepts that the supply of Parts for accepted orders may be subject to availability and if, for any reason, Parts are not or cease to be available, the Company reserves the right to vary the Price with alternative Parts as per clause 5.2. The Company also reserves the right to halt all Services until such time as the Company and the Customer agree to such changes.
- 2.4 Once accepted by the Customer, the Company’s written quotation shall be deemed to interpret correctly the Customer’s instructions, whether written or verbal. Where verbal instructions only are received from the Customer due to a variation subject to clause 5.2 then the Company shall not be responsible for errors or omissions due to any oversight or misinterpretation of those instructions.
- 2.5 If during the provisions of the Services it is discovered that the Services required shall exceed the original estimated and/or quoted cost to which the Customer instructs the Company to cease all Services, then the Customer acknowledges and agrees to indemnify the Company all costs incurred in reassembling the vehicle (including, but not limited to, any new parts required (as some components when removed during the dismantling process often prove not reusable) for the reassemble.
- 2.6 The Customer acknowledges that in the event that the Company is requested by the Customer to perform a temporary repair the Customer accepts that the repair is temporary therefore the Company can offer no guarantee against reoccurrence, effectiveness or further damage.
- 2.7 In the event that the Company is to carry out on-site Services in remote areas only to discover upon arrival that the Customer has not provided the correct information pertaining to the equipment for repair which then causes delay in the Services and the need for the Company to revisit the site with the appropriate Parts to complete the Services, then the Company reserves the right to charge an additional fee for travel in accordance with clause 5.2.
- 2.8 In the event that the Company is required to provide the Services urgently, that may require the Company’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Company reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Company and the Customer.
- 2.9 No representation is given by the Company as to the suitability of the Parts for any purpose, and no responsibility or liability is accepted by the Company in the event that the Customer orders or purchases incorrect Parts.
- 2.10 Where the Company gives advice or recommendations to the Customer in regards to repairs, or the Customer’s agent, with specific instructions regarding the repair or use of the Services and such advice or recommendations are not acted upon then the Company shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the repairs. These repairs will be completed at the risk and liability of the Customer.

3. Change in Control

- 3.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer’s failure to comply with this clause.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to the Company as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Parts or Services on the Customer’s behalf and/or to request any variation to the Services on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Company in writing that said person is no longer the Customer’s duly authorised representative).

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- 4.2 In the event that the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Company in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Company for all additional costs incurred by the Company (including the Company's profit margin) in providing any Parts, Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Price and Payment

- 5.1 At the Company's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Company to the Customer; or
 - (b) the Company's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Company reserves the right to change the Price if a variation to the Company's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Parts (including, but not limited to, any variation as a result of inability to source parts, fluctuations in currency exchange rates or increases to the Company in the cost of taxes, levies, freight charges, travel, materials and labour) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice.
- 5.3 At the Company's sole discretion a deposit may be required.
- 5.4 Time for payment for the Parts/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
- (a) before delivery of the Parts/Equipment;
 - (b) for approved Customer's thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one percent (1%) of the Price for accounts paid by credit card), or by any other method as agreed to between the Customer and the Company.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Parts/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Parts/Equipment

- 6.1 Delivery ("Delivery") of the Parts/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Parts/Equipment at the Company's address; or
 - (b) the Company (or the Company's nominated carrier) delivers the Parts/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At the Company's sole discretion the cost of delivery is in addition to the Price. Where urgent delivery is requested by the Customer, the Company reserves the right to charge the Customer an additional freight surcharge in accordance with clause 5.2.
- 6.3 Delivery charges shall vary depending on the weight and/or volume of the Parts, the means of conveyance, and the destination.
- 6.4 The Customer agrees and acknowledges that glass and/or fragile items are shipped at the Customer's risk.
- 6.5 Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept delivery of the Parts/Equipment even if late and the Company will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Parts passes to the Customer on Delivery and the Customer must insure the Parts on or before Delivery.
- 7.2 If any of the Parts are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Parts. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 7.3 If the Customer requests the Company to leave Parts outside the Company's premises for collection or to deliver the Parts to an unattended location then such Parts shall be left at the Customer's sole risk.
- 7.4 The Customer acknowledges that the Company is only responsible for parts that are replaced by the Company and that in the event that other Parts, subsequently fail, the Customer agrees to indemnify the Company against any loss or damage to the Parts, or caused by the Parts, or any part thereof howsoever arising.

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- 7.5 The Customer acknowledges that Parts supplied may exhibit variations of colour and shade. While every effort will be taken by the Company to match colour and shade of products, the Company shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour or shading between sale samples or images on the Company's website, and the final product supplied.
- 7.6 The Customer further acknowledges and accepts that although second hand Parts supplied by the Company shall be serviceable and fit for the purpose, the condition of such Parts may vary. No guarantee is made by the Company as to the condition of the Parts, and any cosmetic repairs shall be the Customer's responsibility and at the Customer's own cost.
- 7.7 In the event that the Customer believes that the Company has damaged the vehicle during the installation process of the Parts, the Customer shall within twenty-four (24) hours of delivery (time being of the essence) notify the Company of any alleged defect or damage in accordance with 12.1. If the Customer fails to comply with clause 12.1, the vehicle shall be presumed to be free from any defect or damage.
- 7.8 The Customer acknowledges that it is the Customer's responsibility to remove all personal/valuable items from the vehicle prior to the Company carrying out their Services. The Company shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle.
- 7.9 The Customer accepts that in the event that the vehicle is stored for any period on the Company's premises that it is done so at the Customer's own risk and it shall be the Customer's responsibility to ensure their vehicle and its contents are insured adequately or at all.
- 7.10 The Customer acknowledges that the Company can only provide its Services on a vehicle in its current state as supplied to the Company therefore the Company shall not accept any responsibility for the workmanship of any third party that has worked on a Customer's vehicle prior to Services being undertaken by the Company (including, but not limited to, poor paintwork or repairs).

8. Access

- 8.1 The Customer shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the Services. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

9. Title To Parts

- 9.1 The Company and the Customer agree that ownership of the Parts shall not pass until:
- (a) the Customer has paid the Company all amounts owing to the Company; and
 - (b) the Customer has met all of its other obligations to the Company.
- 9.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
- (a) until ownership of the Parts passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Parts and must return the Parts to the Company on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Parts on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Parts then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
 - (d) the Customer should not convert or process the Parts or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
 - (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Parts are kept and recover possession of the Parts.
 - (f) the Company may recover possession of any Parts in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of the Company.
 - (h) the Company may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Customer.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Parts/Equipment that has previously been supplied and that will be supplied in the future by the Company to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to;

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- (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 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Company 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 Parts/Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts/Equipment in favour of a third party without the prior written consent of the Company;
- (e) immediately advise the Company of any material change in its business practices of selling Parts which would result in a change in the nature of proceeds derived from such sales.
- 10.4 The Company 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.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of the Company agreeing to supply the Parts/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).
- 11.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Company's rights under this clause.
- 11.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Parts/Equipment on delivery and must within seven (7) days of delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Parts/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to inspect the Parts/Equipment.
- 12.2 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**).
- 12.3 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Parts/Equipment. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Company is required to replace the Parts under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Parts.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Parts is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion;
 - (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Parts;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) the Company has agreed that the Parts are defective; and
 - (c) the Parts are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Parts are returned in as close a condition to that in which they were delivered as is possible.

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- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Company 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 Parts/Equipment;
 - (b) the Customer using the Parts/Equipment for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Parts/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 the Company;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 In the case of second hand Parts, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Parts prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Company has agreed to provide the Customer with the second hand Parts and calculated the Price of the second hand Parts in reliance of this clause 12.10.
- 12.11 The Company may in its absolute discretion accept non-defective Parts for return in which case the Company may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Parts plus any freight costs.
- 12.12 Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

13. Intellectual Property

- 13.1 Where the Company has designed, drawn or developed Parts/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company.
- 13.2 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

14. Default and Consequences of Default

- 14.1 Interest on overdue invoices shall 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 the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Company's contract default fee, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Parts/Equipment to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 14.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement 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.

15. Cancellation

- 15.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Parts/Equipment at any time before the Parts/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Parts/Equipment. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of the Parts/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Parts/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1988

- 16.1 The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.

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- 16.2 The Customer agrees that the Company 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 is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and Company or required by law from time to time):
- (a) the provision of Parts/Equipment; and/or
 - (b) the marketing of Parts/Equipment by the Company, 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 Parts/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested 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 Parts/Equipment.
- 16.5 The Company 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;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 16.6 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 the Company 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 the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by the Company has been paid or otherwise discharged.
- 17. Unpaid Seller's Rights**
- 17.1 Where the Customer has left any item with the Company for repair, modification, exchange or for the Company to perform any other service in relation to the item and the Company has not received or been tendered the whole of any moneys owing to it by the Customer, the Company shall have, until all moneys owing to the Company are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of the Company shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Company having been obtained against the Customer.
- 18. Equipment Hire**
- 18.1 Equipment shall at all times remain the property of the Company and is returnable on demand by the Company. In the event that Equipment is not returned to the Company in the condition in which it was delivered the Company retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Company shall have right to charge the Customer the full cost of replacing the Equipment.
- 18.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make 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.
 - (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 the Company to the Customer.

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18.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the Company's interest in the Equipment and agrees to indemnify the Company against physical loss or damage including, but not limited to, the perils of 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.

19. General

19.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. 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.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which the Company has its principal place of business, and are subject to the jurisdiction of the Bundaberg Courts in that state.

19.3 Subject to clause 12 the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Parts/Equipment hire).

19.4 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 the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

19.5 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

19.6 The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Parts/Equipment to the Customer.

19.7 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.

19.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.