

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Supplier”** means Harvestview Pty Ltd T/A Casino Engineering Industrial Supplies, its successors and assigns or any person acting on behalf of and with the authority of Harvestview Pty Ltd T/A Casino Engineering Industrial Supplies.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Supplier to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 **“Equipment”** means all Equipment including any accessories supplied on hire by the Supplier to the Customer (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Customer.
- 1.6 **“Wet Hire”** means that the Equipment is supplied by the Supplier with an operator, who shall at all times remain an employee or representative of the Supplier.
- 1.7 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular Customer and website, and can be accessed either by the web server or the Customer’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.9 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between the Supplier and the Customer in accordance with clause 6 below.
- 1.10 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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 any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Customer’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.
- 2.6 These terms and conditions may be meant to be read in conjunction with the Supplier’s Quotation Form, or Plant Hire Form and:
(a) where the context so permits, the terms ‘Works or ‘Materials shall include any supply of Equipment, as defined therein; and
(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.7 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Works only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Works the Supplier is to supply. The Supplier will not accept liability to the Customer for quality of Materials which comply with accepted industry standards.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Materials or Works on the Customer’s behalf and/or to request any variation to the Works on the Customer behalf (such authority to continue until all requested Works have been completed or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer’s duly authorised representative).
- 3.2 In the event that the Customer’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier’s profit margin) in providing any Works, Materials or variation/s.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Customer shall give the Supplier 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

6. Price and Payment

- 6.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Supplier to the Customer in respect of Works performed or Materials/Equipment supplied; or
 - (b) the Supplier's quoted Price (subject to clause 6.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within thirty (30) days.
- 6.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Materials/Equipment which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans, specifications or change in design) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the worksite, obscured building/worksite defects, incorrect structural measurements provided by the Customer, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Supplier in the cost of labour, Materials or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, which are beyond the Supplier's control.
- 6.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Supplier's sole discretion a deposit may be required.
- 6.5 Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) on delivery of the Materials/Equipment; or
 - (b) on completion of the Works; or
 - (c) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed; or
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) 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 Supplier.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.
- 6.7 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Materials. 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.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the worksite ready for the Works; or

- (c) notify the Supplier that the worksite is ready.
- 7.3 Delivery Materials/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Materials/Equipment at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Materials/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 7.4 At the Supplier's sole discretion, the cost of delivery is in addition to the Price.
- 7.5 The Supplier may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by the Supplier for delivery of the Works/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works/Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Works/Equipment as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Works/Equipment at a later time and date, and/or for storage of the Equipment/Materials.

8. Worksite Access and Condition

- 8.1 The Supplier is not responsible for the removal of rubbish from or clean-up of the building/construction worksite/s. All rubbish generated by the Supplier will be placed in a designated areas appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
- 8.2 It is the intention of the Supplier and agreed by the Customer that the Customer shall ensure that the Supplier has clear and free access to the worksite at all times to enable them to undertake the Works (including carrying out worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Supplier shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 8.3 In the event the Customer requires an employee or sub-contractor of the Supplier to undertake a worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay the Supplier's standard (and/or overtime, if applicable) hourly labour rate.

9. Risk

- 9.1 If the Supplier retains ownership of the Materials under clause 12 then:
- (a) where the Supplier is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery;
 - (b) where the Supplier is to both supply and install Materials then the Supplier shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 9.2 Notwithstanding the provisions of clause 9.1 if the Customer specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 9.3 The Supplier shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 9.4 The Customer acknowledges and agrees that were the Supplier has been asked to perform repairs that:
- (a) the Supplier offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) the Supplier is only responsible for components that are replaced/repaired by the Supplier and does not at any stage accept any liability in respect of previous Materials and/or Works supplied by any other third party that subsequently fail and found to be the source of the failure; and
 - (c) the Supplier shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (b) and clause 11.2 applies.

10. Accuracy of Customer's Plans and Measurements

- 10.1 In the event the Customer gives information relating to the Materials (including plans, specifications, measurements, quantities, CAD drawings and other information provided by the Customer):
- (a) it is the Customer's responsibility to verify the accuracy of the information and/or data before the Customer or the Supplier places an order based on the information. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;
 - (b) the Supplier shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is incorrect or inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting therefrom.

11. Compliance with Laws

- 11.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 11.2 Where the Customer has supplied products for the Supplier to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if in the Supplier's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then the Supplier shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 11.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

11.4 The Supplier shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works.

12. Title

12.1 The Supplier and the Customer agree that ownership of the Materials shall not pass until:

- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
- (b) the Customer has met all of its other obligations to the Supplier.

12.2 Receipt by the Supplier 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.

12.3 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 12.1:

- (a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
- (c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries;
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (e) the Customer should not convert or process the Materials 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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (f) unless the Materials have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials;
- (g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Supplier;
- (i) the Supplier may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Works – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.

13.3 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 Supplier may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier 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 Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;
- (e) immediately advise the Supplier of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

13.4 The Supplier 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.

13.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

13.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 13.3 to 13.5.

13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

14.1 In consideration of the Supplier agreeing to supply the Materials, 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).

- 14.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause.
- 14.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 15.1 The Customer must inspect all Materials/Equipment on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Supplier 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 Materials/Works/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Materials/Equipment or to review the Works provided.
- 15.2 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**).
- 15.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works/Equipment. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Supplier is required to replace any Materials under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Materials.
- 15.7 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 15.8 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) the Supplier has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, the Supplier 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 Materials;
 - (b) the Customer using the Materials for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Customer or any third party without the Supplier's prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by the Supplier;
 - (f) fair wear and tear, any accident, or act of God.
- 15.11 In the case of second hand Material, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier 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 Supplier has agreed to provide the Customer with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 15.11.
- 15.12 The Supplier may in its absolute discretion accept non-defective Materials for return in which case the Supplier may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.
- 15.13 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 16. Intellectual Property**
- 16.1 Where the Supplier has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 16.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 16.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Supplier has created for the Customer.

17. Default and Consequences of Default

- 17.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Supplier's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 17.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Supplier;
 - (c) the Customer becomes insolvent or bankrupt, 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

18. Cancellation

- 18.1 Without prejudice to any other remedies the Supplier 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 Supplier may suspend or terminate the supply of Works/Equipment to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 18.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment are due to be delivered) by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Works already performed or Materials/Equipment already provided. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels the delivery of Works/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Materials/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.

19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email Customer type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.
- 19.4 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates 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 including the Customer's repayment history in the preceding two (2) years.
- 19.5 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 19.7 The Supplier may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The Customer shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
 - (b) that the Supplier does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.10 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Unpaid Seller's Rights

- 20.1 Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Customer, the Supplier shall have, until all monies owing to the Supplier 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.
- 20.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Customer.

21. Equipment Hire

- 21.1 Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier 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 Supplier shall have right to charge the Customer the full cost of replacing the Equipment.
- 21.2 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 Supplier to the Customer.
- 21.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self-insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier 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.
- 21.4 Notwithstanding the above clause, immediately on request by the Supplier the Customer will pay:
- (a) any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;

- (b) any insurance excess payable in relation to a claim made by either the Customer or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Supplier's.
- 21.5 Return of the Equipment ("Return") will be completed when:
- (a) the Equipment is returned by the Customer to the Supplier's place of business; or
- (b) when the Supplier takes back possession of the Equipment once collection by the Supplier is affected.
- 22. Wet Hire**
- 22.1 Notwithstanding that the operator of the Equipment is an employee or representative of the Supplier ("Personnel"), the Personnel shall operate the Equipment in accordance with the instructions of the Customer, and accordingly, the Customer shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Customer's instructions.
- 22.2 The Customer shall be responsible for:
- (a) ensuring the Supplier has clear and free access and egress to the nominated worksite (including all necessary arrangements where any access is required through private property, and that a maximum clearance of three and a half metres (3.5m) is allowed in respect of overhead obstacles, tress or power lines), and in particular that the ground at the worksite is firm and stable (with adequate compaction to support the Equipment under its wheels, tracks or outriggers, including ensuring any footpaths, curbs and channels are suitably planked), and that the worksite does not have excessive slope. The Supplier reserves the right not to enter the worksite if the Supplier believes it unsafe, and the Customer shall remain liable for the costs payable until the issue is resolved; and
- (b) ensuring that adequate lighting is provided during the provision of the Works, and that the Supplier is notified of the location of any underground services on the worksite;
- (c) all damage and/or salvage costs involving the Equipment (and said costs shall be in addition to the Price) should it be necessary for the Equipment to be towed in, or out of the worksite;
- (d) provide adequate security for any Equipment left at the worksite overnight or during periods when the worksite is left unattended, unless it has been otherwise agreed in writing that the Supplier arrange such security on the Customer's behalf.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 25. Dispute Resolution**
- 25.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 26. Building and Construction Industry Security of Payments Act 1999**
- 26.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Works, Materials or Equipment then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 26.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

27. General

- 27.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in Casino, New South Wales.
- 27.3 Subject to clause 15, the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works/ Equipment on hire).
- 27.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.5 The Customer cannot licence or assign without the written approval of the Supplier.
- 27.6 The Supplier may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 27.7 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Works to the Customer.
- 27.8 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.
- 27.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.