

1. Definitions

- 1.1 “NFC” means Middle Arm Holdings Pty Ltd T/A Northern Franna Cranes, its successors and assigns, or any person acting on behalf of, and with the authority of Middle Arm Holdings Pty Ltd T/A Northern Franna Cranes.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting NFC to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Services” means all Services provided by NFC to the Client at the Client’s request from time to time (and includes all Equipment used to undertake the Services; where applicable, “Services” and “Equipment” shall be used interchangeably).
- 1.4 “Equipment” means all Equipment (including any accessories) supplied on hire by NFC to the Client. The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by NFC to the Client.
- 1.5 “Goods” means all wares, merchandise, plant and machinery and articles of every description, together with any packages, crates, pallets, cases and contents thereof whatsoever kind, to be handled, lifted and/or carried by the way of NFC’s Services.
- 1.6 “Site” means the location/s at which the Services are to be provided.
- 1.7 “Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by NFC to the Client.
- 1.8 “Charges” means the cost of the Services (plus any GST where applicable) as agreed between NFC and the Client subject to clause 5 of this contract.
- 1.9 “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 Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by this contract if the Client places an order for, or provision of, the Services.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and NFC.
- 2.3 A waiver of the Client’s obligations hereunder is ineffective unless it is in writing and is verified and signed by a duly appointed office of NFC.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Northern Territory) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that NFC 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 NFC 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 NFC in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of NFC; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Charges and Payment

- 5.1 At NFC’s sole discretion, the Charges shall be computed at the rate applicable to the Equipment (with all hours being calculated to the nearest half hour) from the time the Equipment leaves NFC’s depot, until the time it returns to the depot, and either:
- (a) as indicated on invoices provided by NFC to the Client in respect of Services provided; or
 - (b) NFC’s quoted Charges (subject to clauses 5.2), which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 NFC reserves the right to change the Charges:
- (a) if a variation to the Services originally scheduled (including Equipment supplied, or any applicable specifications) is requested;
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, obscured Site defects which require remedial work (including unseen obstructions, etc.), health hazards and safety considerations (such as the discovery of asbestos/site contamination), prerequisite work by any third party not being completed substantially or at all, etc.) which are only discovered on commencement of the Services; or
 - (c) as a result of an increase in NFC’s costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services or due to relevant industry awards (e.g. site allowance and severance pay), or increases in the costs of labour, which are beyond the control of NFC.
- 5.3 At NFC’s sole discretion a deposit may be required.
- 5.4 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by NFC, which may be:
- (a) on delivery of the Equipment;
 - (b) by way of instalments in accordance with NFC’s payment schedule which may be on a monthly basis for long term hire contracts;
 - (c) for certain approved Clients, fourteen (14) days following the date of any invoice given to the Client;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by NFC.
- 5.5 Payment may be made by bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and NFC.

- 5.6 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by NFC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Charges do not include GST. In addition to the Charges, the Client must pay to NFC an amount equal to any GST NFC must pay for any provision of Services by NFC under this contract, or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges, except where they are expressly included in the Charges.
- 5.8 The Client acknowledges and agrees that the Client's obligations to NFC for the provision of Services shall not cease until:
- (a) the Client has paid NFC's all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to NFC in respect of all contracts between NFC and the Client.
- 5.9 Receipt by NFC 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, and until then NFC's rights and ownership in relation to the Services, and this contract, shall continue.

6. Provision of the Services

- 6.1 Any time or date given by NFC to the Client is an estimate only. The Client must still accept provision of the Services even if late and NFC will not be liable for any loss or damage incurred by the Client as a result of any delay in the provision of the Services, or interruption to the continuity thereof, due to reasons beyond the reasonable and practical control of NFC (including, but not limited to, any event outlined in clause 20.7, breakdown of Equipment, transport delays, obeying instructions given by the Client (or the Client's representative), accidents, or other labour difficulties, etc.), and the cost of such delay shall be the responsibility of the Client.
- 6.2 No allowance whatsoever can be made for time during which NFC's Equipment is not in use for any reason, unless NFC confirms special prior arrangements in writing. Non-usage for inclement weather and/or industrial disruptions will be charged at the applicable rate, as per the Charges. In the event of Equipment breakdown:
- (a) Charges will not be payable during the time the Equipment is not working, unless the condition is due to the negligent instruction or mishandling on the part of, or attributable to, the Client; and
 - (b) NFC will not be liable for any loss or damage whatsoever that may be occasioned by the Client.
- 6.3 At NFC's sole discretion, delivery and collection costs are an additional charge.
- 6.4 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of NFC and operates the Equipment in accordance with the Client's instructions. As such NFC shall not be liable for any actions of the operator in following the Client's instructions.
- 6.5 The Client acknowledges and accepts that lifting gear is an additional extra and as such be charged for accordingly.

7. Client's Responsibilities

- 7.1 The Client shall:
- (a) be responsible for:
 - (i) ensuring NFC has clear and free access and egress to the Site at all times, and that such access is suitable to accept the weight of NFC's Equipment, to enable them to undertake the Services. NFC shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, cross-overs, driveways and concreted or paved or grassed areas), unless due to the negligence of NFC, and the Client agrees to indemnify NFC against all costs incurred thereby in recovering such Equipment in the event they become bogged or otherwise immovable; and
 - (ii) advising NFC, prior to commencement of the Services, of the precise location of all known underground/hidden mains/services, and asbestos and/or or hazardous materials (and clearly marking the same) on Site. The underground/hidden mains/services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. Whilst NFC will take all care to avoid damage to any underground services, the Client agrees to indemnify NFC in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified by the Client.
 - (b) notify NFC of any incident, accident or defect within twenty-four (24) hours of occurring;
 - (c) ensure that all pre-starts are to be conducted and recorded daily;
 - (d) the number of machinery hours are to be reported via email to NFC on a monthly basis;
 - (e) provide amenities and first aid services to NFC's employees in compliance with all applicable health and safety legislation in operation in the state where the Services are undertaken; and
 - (f) should it be necessary for NFC's Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Charges and either:
 - (i) charged to the Client's account, plus a margin of ten percent (10%); or
 - (ii) payable direct to the salvage company by the Client.
 - (g) provide adequate security for any of NFC's Equipment left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that NFC arrange such security on the Client's behalf.
- 7.2 NFC reserves the right not to enter the Site if NFC reasonably believes it unsafe, and the Client shall remain liable for the Charges payable until the issue is resolved.
- 7.3 Notwithstanding that the operator of NFC's Equipment is an employee or representative of NFC, the operator shall operate the Equipment in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 7.4 In the event the Client requires an employee of NFC to undertake a recognised safety course or medical examination during working hours, the Client will be liable to pay the hourly hire Charges for that period, notwithstanding that the Services are not provided during such time. If any course is undertaken outside of NFC's normal business hours, then the Client shall be liable to pay NFC's standard (and/or overtime, if applicable) hourly labour rate.
- 7.5 The Client expressly warrants, represents, confirms and/or acknowledges that:
- (a) where the Client has declared the weight of the Goods, and NFC has relied upon such declared weight, then the Client shall be responsible for all extra cost and risk incurred by NFC, and shall be liable for any loss or damage occasioned either directly, or indirectly, to NFC by reason of NFC having relied upon such declared weight; and

- (b) the person delivering the Goods to NFC for handling, lifting and/or carriage is authorised by the Client to sign and accept these terms and conditions; and
- (c) the Goods are not explosive, inflammable, or otherwise dangerous or damaging. If the Goods are of considered such, the Client must present NFC with a full description of the Goods, disclosing their nature, and such Goods may only be handled, lifted and/or carried special arrangement. If any such Goods are tendered otherwise, the Client shall be liable for any loss or damage occasioned either directly, or indirectly, to NFC; and
- (d) the Client will remain responsible to NFC for all its proper charges incurred in respect of the handling, lifting and/or carriage of Goods.

8. Risk

- 8.1 All Goods are handled, lifted and/or carried entirely at the Client's sole risk. NFC shall not be responsible in tort or contract or otherwise for any loss of, or damage to, the Goods, misdelivery, or failure to provide the Services, or delay in provision of the Services, howsoever occasioned (including, without limiting the foregoing, the negligence or wilful act, or default, of NFC or others, and whether or not the same occurs in the course of performance by NFC of the contract, or in events which are in the contemplation of NFC and/or the Client, or in events which are foreseeable by them (or either of them), or in events which would constitute fundamental breach of the contract, or a breach of a fundamental term thereof.
- 8.2 Insurance of the Goods will not be effected by NFC for the benefit of the Client, except upon the written instructions of the Client, and then only at the Client's expense, and upon receipt of a declaration of value of the Goods, or a reasonable time prior to the handling, lifting and/or carriage of the Goods, whichever shall occur the earlier.
- 8.3 Unless due to the negligence of NFC, the Client accepts full responsibility for, and shall keep NFC indemnified against all liability in respect of, all actions, proceedings, claims, demands, notices, losses, damages, costs and expenses to which NFC shall or may become liable in respect of (including without limitation):
 - (a) any loss or damage to any property, or any death or injury to persons or otherwise arising from the provision of the Services whether or not arising from any negligence, failure or omission of the Client or any other persons;
 - (b) any underground or overhead services, footpaths, roads, driveways, grounds, lawns, fences or any other like property, whether public or private, however sustained, caused or contributed to by the provision of the Services.
- 8.4 NFC is not a Common Carrier, and will accept no liability as such. The Services are provided by NFC subject only to these terms and conditions and accordingly, NFC reserves the right to refuse to handle, lift or carry any Goods for any person/s at its sole discretion.
- 8.5 Unless otherwise agreed to in writing between the parties, NFC shall not be deemed the principle contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliancy under any relevant legislation or policy, etc.). However, NFC shall have public liability insurance of at least twenty million dollars (\$20m). It is the Client's responsibility to ensure that they are similarly insured.
- 8.6 For any repair Services provided by NFC, the Client acknowledges and accepts that:
 - (a) NFC is only responsible for parts that are replaced by NFC and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify NFC against any loss or damage to the equipment, or caused by the parts, or any part thereof howsoever arising; and
 - (b) where NFC has performed temporary repairs on the unit that:
 - (i) NFC offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) NFC will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the damaged unit.
- 8.7 In the event that NFC is required to provide the repair Services urgently which may require NFC's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then NFC reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between NFC and the Client.

9. Compliance with Laws

- 9.1 The Client and NFC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation pertaining to the Services (including but not limited to those in relation to asbestos and/or other hazardous materials (and the safe removal and disposal of the same). The Client agrees to indemnify NFC against all claims arising from health issues related to exposure to asbestos or any other contaminants on Site.

10. Title

- 10.1 The Equipment is and will at all times remain the absolute property of NFC, and:
 - (a) nothing contained in this agreement renders on the Client any right or property or interest in the Equipment other than as a hirer of said Equipment for the purposes of NFC undertaking the Services;
 - (b) the Client must return the Equipment to NFC upon request to do so.
- 10.2 The Client must not attempt to, assign, mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, license or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien or other encumbrance over, the Equipment or any part thereof, or any of the rights of the Client to the Equipment, or any of the rights of the Client under this agreement, and must keep the Equipment free from any distress, execution or other legal process.
- 10.3 NFC may take possession of the Equipment with, or without, notice to the Client, and the Client must (at the Client's expense) immediately on demand, deliver up the Equipment in good order and repair in accordance with the directions of NFC, and in default the Client irrevocably authorises NFC to enter any premises occupied or controlled or believed by NFC to be occupied or controlled by the Client and repossess the Equipment, and for such purposes break open any gate or lock and dismantle the Equipment from any part of the premises to which they may be affixed, and the Client indemnifies NFC in respect of any loss arising from any act done under or by virtue of this clause.

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

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

- 11.2 Upon assenting to these terms and conditions in writing the Client 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 Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to NFC for Services – that have previously been supplied and that will be supplied in the future by NFC to the Client.
- 11.3 The Client 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 NFC 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 11.3(a)(i) or 11.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, NFC 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 registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of NFC;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of NFC.
- 11.4 NFC and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by NFC, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by NFC under clauses 11.2 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 11.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 11 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.

12. Security and Charge

- 12.1 In consideration of NFC agreeing to provide Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies NFC from and against all NFC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NFC's rights under this clause.
- 12.3 The Client irrevocably appoints NFC and each director of NFC as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

- 13.1 The Client must inspect the Services on completion and must within twenty-four (24) hours of such time notify NFC in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect therein as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow NFC to inspect/review the Services.
- 13.2 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").
- 13.3 NFC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, NFC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. NFC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, NFC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If NFC is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then NFC may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of any Services and consumables which have been provided to the Client which were not defective.
- 13.7 If the Client is not a consumer within the meaning of the CCA, NFC's liability for any defect or damage in the Services is:
- (a) limited to the value of any express warranty, or warranty card, provided to the Client by NFC (at NFC's sole discretion); or
 - (b) otherwise negated absolutely.
- 13.8 Notwithstanding clauses 13.1 to 13.7, but subject to the CCA, NFC shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) interference with the Services by the Client or any third party without NFC's prior approval; or
 - (b) the Client failing to follow any instructions or guidelines provided by NFC; or
 - (c) fair wear and tear, any accident, or act of God.

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 NFC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes NFC any money, the Client shall indemnify NFC from and against all costs and disbursements incurred by NFC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NFC's contract default fee, and bank dishonour fees).

- 14.3 Further to any other rights or remedies NFC may have under this contract, if the Client has made payment to NFC, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by NFC under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 14.4 Without prejudice to NFC's other remedies at law, NFC shall be entitled to cancel all, or any part, of any order of the Client which remains unfulfilled, and all amounts owing to NFC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NFC becomes overdue, or in NFC's opinion the Client will be unable to make a payment when it falls due; or
 - (b) the Client has exceeded any applicable credit limit provided by NFC;
 - (c) the Client 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Cancellation/Termination**
- 15.1 Without prejudice to any other remedies NFC may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions NFC may suspend or terminate the provision of Services to the Client. NFC will not be liable to the Client for any loss or damage the Client suffers because NFC has exercised its rights under this clause.
- 15.2 NFC may terminate this contract, or cancel provision of the Services, at any time before the Services have commenced by giving written notice to the Client. On giving such notice NFC shall repay to the Client any sums paid in respect of the Charges. NFC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Client terminates this contract, or otherwise cancels provision of the Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by NFC as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 In the event that the Client terminates this contract, or otherwise cancels provision of the Services, the Client must provide notice of such to NFC at least twelve (12) hours prior to the specified date and time for provision of the Services, or the Client shall be liable for any and all loss incurred (whether direct or indirect) by NFC as a direct result of the cancellation (including, but not limited to, any loss of profits, or the cost of returning any third-party sourced equipment).
- 16. Privacy Act 1988**
- 16.1 The Client agrees for NFC to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by NFC.
- 16.2 The Client agrees that NFC may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and
 - (b) to notify other credit providers of a default by the Client; and
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 16.3 The Client consents to NFC being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by NFC for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 16.5 NFC may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above; and
 - (b) name of the credit provider and that NFC is a current credit provider to the Client; and
 - (c) whether the credit provider is a licensee; and
 - (d) type of consumer credit; and
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); and
 - (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 Client no longer has any overdue accounts and NFC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); and
 - (g) information that, in the opinion of NFC, the Client has committed a serious credit infringement; and
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Client shall have the right to request (by email) from NFC:
- (a) a copy of the information about the Client retained by NFC and the right to request that NFC correct any incorrect information; and
 - (b) that NFC does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 NFC will destroy personal information upon the Client's request (by email) 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.
- 16.9 The Client can make a privacy complaint by contacting NFC via email. NFC 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

17. Construction Contracts (Security of Payments) Act

- 17.1 At NFC's sole discretion, if there are any disputes or claims for unpaid Equipment hire and/or Services then the provisions of the Construction Contracts (Security of Payments) Act may apply.
- 17.2 Nothing in this contract is intended to have the effect of contracting out of any provisions of the Construction Contracts (Security of Payments) Act of the Northern Territory of Australia, except to the extent permitted by the Act where applicable.

18. Service of Notices

- 18.1 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.
- 18.2 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.

19. Trusts

- 19.1 If the Client 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 NFC may have notice of the Trust, the Client covenants with NFC as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client 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 Client against the Trust or the trust fund. The Client 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 Client will not without consent in writing of NFC (NFC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client 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.

20. General

- 20.1 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 prohibited, invalid, void, illegal or unenforceable in any jurisdiction, that provision will, as to that jurisdiction be ineffective to the extent of the prohibition, invalidity or unenforceability without affecting, prejudicing or impairing the validity, existence, legality and enforceability of the remaining provisions of these terms and conditions, or that provision is any other jurisdiction.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the Northern Territory, the Territory in which NFC has its principal place of business, and are subject to the jurisdiction of the Darwin Courts in the Northern Territory.
- 20.3 Subject to clause 13, NFC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit or any rectification costs), or any third party claims, suffered by the Client in connection with the provision of Services by NFC, or arising out of a breach by NFC of these terms and conditions. Alternatively, NFC's liability shall be limited to damages which under no circumstances shall exceed the Charges.
- 20.4 NFC may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 20.5 NFC may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where NFC elects to sub-contract out any part of the Services, it shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of NFC's sub-contractors without the authority of NFC.
- 20.6 The Client agrees that NFC may amend these terms and conditions at any time. If NFC makes a change to these terms and conditions, then that change will take effect from the date on which NFC notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for NFC to provide any Services to the Client.
- 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, strike, lock-out, industrial action/dispute, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.8 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.