

1. Definitions

- 1.1 “Ducats” means Ducats Earthmoving Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Ducats Earthmoving Pty Ltd.
- 1.2 “Customer” means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Ducats to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by Ducats to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Ducats to the Customer.
- 1.5 “Price” means the Price payable for the Goods and/or Equipment hire as agreed between Ducats and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with Ducats’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Ducats.

3. Change in Control

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

4. Price and Payment

- 4.1 At Ducats’ sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Ducats to the Customer; or
 - (b) Ducats’ quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Ducats reserves the right to change the Price if a variation to Ducats’ quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, delays in freight, safety considerations, prerequisite work by any third party not being completed, inaccurate measurements provided by the Customer or as a result of any increase to Ducats’ in the cost of materials and labour) will be charged for on the basis of Ducats’ quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At Ducats’ sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Ducats, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) by way of instalments/progress payments in accordance with Ducats’ payment schedule;
 - (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, at Ducats’ discretion, either seven (7) or fourteen (14) days following the date of any invoice given to the Customer by Ducats.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and Ducats.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Ducats an amount equal to any GST Ducats must pay for any supply by Ducats under this or any other agreement for the sale of the Goods/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods/Equipment

- 5.1 Delivery (“Delivery”) of the Goods/Equipment is taken to occur at the time that:
 - (a) the Customer or the Customer’s nominated carrier takes possession of the Goods/Equipment at Ducats’ address; or
 - (b) Ducats (or Ducats’ nominated carrier) delivers the Goods/Equipment to the Customer’s nominated address even if the Customer is not present at the address.
- 5.2 At Ducats’ sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then Ducats shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

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- 5.4 Ducats may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by Ducats to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and Ducats will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Ducats is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Ducats is sufficient evidence of Ducats' rights to receive the insurance proceeds without the need for any person dealing with Ducats to make further enquiries.
- 6.3 If the Customer requests Ducats to leave Goods outside Ducats' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 6.4 Where the Customer has supplied goods for Ducats to complete the works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. Ducats shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of goods supplied by the Customer.
- 6.5 The Customer acknowledges that variations of colour and texture are inherent in concrete. Ducats shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
- 6.6 Detailed drawings of any services that will be embedded in the concrete are to be provided to Ducats prior to commencement of any works. Whilst all due care will be taken no liability will be accepted by Ducats for damage to the services or any other element embedded in the concrete.
- 6.7 Ducats gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the works such as:
- (a) hairline cracking of paving and grout; or
 - (b) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 6.8 The Customer acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of re pair or replacement shall be borne by the Customer.
- 6.9 Ducats shall not be liable for any defect in the Goods if the Customer does not follow Ducats' recommendation to:
- (a) water the concrete for a periodically to limit the risk of possible cracking due to weather conditions;
 - (b) avoid foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - (c) avoid heavy furniture being placed on the concrete area for a minimum of twenty-four (24) hours.
- 6.10 Where Ducats gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then Ducats shall require the Customer or their agent to authorise commencement of the works in writing. Ducats shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works.
- 6.11 The Customer shall supply an area suitable for washing out Ducats' equipment and for depositing all unused concrete and slurry.

7. Access

- 7.1 The Customer shall ensure that Ducats has clear and free access to the work site at all times to enable them to deliver the Goods. Ducats shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Customer.
- 7.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Ducats against all costs incurred by Ducats in recovering such vehicles in the event they become bogged or otherwise immovable.

8. Underground Locations

- 8.1 Prior to Ducats commencing any work the Customer must advise Ducats of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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.
- 8.2 Whilst Ducats will take all care to avoid damage to any underground services the Customer agrees to indemnify Ducats 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 as per clause 8.1.

9. Title To Goods

- 9.1 Ducats and the Customer agree that ownership of the Goods shall not pass until:

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

10. Personal Property Securities Act 2009 (“PPSA”)

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by Ducats to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Ducats 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 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Ducats 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 Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Ducats;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Ducats;
 - (e) immediately advise Ducats of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Ducats and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Ducats, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Ducats under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of Ducats agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Ducats from and against all Ducats' costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Ducats' rights under this clause.
- 11.3 The Customer irrevocably appoints Ducats and each director of Ducats as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

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

- 12.1 The Customer must inspect the Goods/Equipment on delivery and must within twenty-four (24) hours of delivery notify Ducats 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 Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Ducats to inspect the Goods/Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 12.3 Ducats acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Ducats makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Ducats' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Ducats' liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Ducats is required to replace the Goods under this clause or the CCA, but is unable to do so, Ducats may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Ducats' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Ducats at Ducats' sole discretion;
 - (b) limited to any warranty to which Ducats is entitled, if Ducats did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) Ducats has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Ducats 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 Goods/Equipment;
 - (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Ducats;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Ducats 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 Ducats has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.10.
- 12.11 Ducats may in its absolute discretion accept non-defective Goods for return in which case Ducats may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 12.12 Notwithstanding anything contained in this clause if Ducats is required by a law to accept a return then Ducats will only accept a return on the conditions imposed by that law.

13. Intellectual Property

- 13.1 Where Ducats has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Ducats.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Ducats will not cause Ducats to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Ducats against any action taken by a third party against Ducats in respect of any such infringement.
- 13.3 The Customer agrees that Ducats may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Ducats has created for the Customer.

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

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- 14.3 Without prejudice to any other remedies Ducats may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Ducats may suspend or terminate the supply of Goods/Equipment to the Customer. Ducats will not be liable to the Customer for any loss or damage the Customer suffers because Ducats has exercised its rights under this clause.
- 14.4 Without prejudice to Ducats' other remedies at law Ducats shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Ducats shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Ducats becomes overdue, or in Ducats' opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation

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

16. Privacy Act 1988

- 16.1 The Customer agrees for Ducats 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 Customer in relation to credit provided by Ducats.
- 16.2 The Customer agrees that Ducats 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 years.
- 16.3 The Customer consents to Ducats being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Customer agrees that personal credit information provided may be used and retained by Ducats for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; 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 Goods/Equipment.
- 16.5 Ducats 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.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
 - (b) name of the credit provider and that Ducats 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 Ducats has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Ducats, 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).
- 16.7 The Customer shall have the right to request (by e-mail) from Ducats:
- (a) a copy of the information about the Customer retained by Ducats and the right to request that Ducats correct any incorrect information; and

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- (b) that Ducats does not disclose any personal information about the Customer for the purpose of direct marketing.
- 16.8 Ducats 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Customer can make a privacy complaint by contacting Ducats via e-mail. Ducats 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.

17. Equipment Hire

- 17.1 Equipment shall at all times remain the property of Ducats and is returnable on demand by Ducats. In the event that Equipment is not returned to Ducats in the condition in which it was delivered Ducats retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all Ducats shall have right to charge the Customer the full cost of replacing the Equipment.
- 17.2 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 Ducats to the Customer.
- 17.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Ducats' interest in the Equipment and agrees to indemnify Ducats 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.

18. Building and Construction Industry Security of Payments Act 1999

- 18.1 At Ducats' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 18.2 Nothing in this agreement 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.

19. General

- 19.1 The failure by Ducats to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ducats' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which Ducats has its principal place of business, and are subject to the jurisdiction of the Armidale courts in New South Wales.
- 19.3 Subject to clause 12 Ducats 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 Ducats of these terms and conditions (alternatively Ducats' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 19.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Ducats nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 Ducats may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6 The Customer agrees that Ducats may amend these terms and conditions at any time. If Ducats makes a change to these terms and conditions, then that change will take effect from the date on which Ducats notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Ducats to provide Goods/Equipment to the Customer.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.