

# SYSTEM RIGGING

## GENERAL CONDITIONS FOR THE SALE OF GOODS AND/OR SERVICES

These terms and conditions are between the Parties described in the Schedule (together, the **Parties** and each a **Party**). These terms and conditions and the Schedule form the entire agreement under which System Rigging Pty Ltd ACN 636 533 287 (**System Rigging**) will sell or supply to the Customer (the **Customer**) the Goods as set out in the Schedule and all labour or services in connection with such Goods (**Services**).

### 1. DEFINED DEFINITIONS & INTERPRETATION

#### 1.1 Definitions

**ACL** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Agreement** means the Sale Agreement to which these Terms are attached.

**Business Day** means a day other than Saturday, Sunday or public holiday in Brisbane, Queensland.

**Collect** or **Collection** means collection of the Goods in accordance with clause 5.

**Confidential Information** includes information or documentation which:

- (a) is disclosed to the Customer in connection with this Agreement at any time;
- (b) is prepared or produced under or in connection with this Agreement at any time;
- (c) relates to System Rigging's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Customer receives that information.

**Customer** means the customer as set out in the "customer details" section of the Schedule to this Agreement.

**Delivery** or **Delivering** means delivery of the Goods in accordance with clause 5.

**Delivery Costs** means the costs associated with the delivery or the provision of the Goods, including any insurance, customs, tariffs, duties or other such charges that may apply to the Goods.

**Dispatch** means when Goods are dispatched by System Rigging to the Customer for Delivery.

**Intellectual Property** means any copyright, registered or unregistered designs, specifications, inventions, ideas, techniques, engineering and manufacturing methods, or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information, or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Law** or **Laws** means all applicable laws, orders, judgments, rules, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licenses, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the provision of the Goods.

**Liability** means any expense, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

**Order** means an offer by the Customer to purchase Goods from System Rigging as set out in the Schedule and these Terms and Conditions.

**Personnel** means, in respect of a Party, any of its officers, employees, consultants, suppliers, subcontractors or agents.

**Purchase Price** has the meaning given in the Schedule.

**Schedule** means the schedule to this Agreement.

**Statutory Rights** means the rights, warranties, guarantees and remedies relating to the provision of the Goods, which cannot be excluded, restricted or modified by Law.

**System Rigging** means System Rigging Pty Ltd (ACN 636 533 287).

#### 1.2 Interpretation

In this Agreement:

- (a) a reference to this Agreement or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference to legislation includes any statutory modification, or substitution of that legislation and any subordinate legislation issued under that legislation;
- (c) a reference to the background, a clause, schedule or annexure is a reference to the background, a clause, a schedule or an annexure to or of this Agreement;
- (d) headings are inserted for convenience only and do not form part of this Agreement;
- (e) the background accurately sets out the circumstances in which the Parties have entered into this Agreement;
- (f) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (g) a reference to a corporation or natural person includes its personal representatives, successors and permitted assigns (as applicable);
- (h) a reference to a breach of warranty includes that warranty not being true or accurate;
- (i) including and includes are not words of limitation;
- (j) a reference to a time is to that time in Queensland, Australia;
- (k) monetary amounts are expressed in Australian dollars;
- (l) the singular includes the plural and vice-versa; and
- (m) neither this Agreement nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

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## 2. QUOTATION

- (a) Any quotation issued by System Rigging substantially in the form as set out in the Schedule may be withdrawn or varied at any time prior to a related Order being accepted by System Rigging in accordance with clause 3.
- (b) A quotation will only be valid for 30 days (or as otherwise set out in the Schedule) from its date of issue unless extended in writing by System Rigging.
- (c) All prices quoted by System Rigging relate to the sale of Goods and/or provision of Services on these terms and conditions.

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## 3. ACCEPTANCE OF ORDERS

- (a) The Customer may request System Rigging to sell Goods to the Customer in accordance with these terms and conditions by providing an Order to System Rigging.
- (b) System Rigging may accept or reject an order in whole or in part and will notify the Customer if the Order or part of the Order is not accepted.
- (c) If System Rigging accepts an Order, it will notify the Customer by providing the Customer with an invoice for the Goods specified in the Order.
- (d) By paying an invoice issued by System Rigging in accordance with clause 3(c), the Customer will be deemed to have accepted the terms of this Agreement.
- (e) If, after acceptance of an Order by System Rigging, the Customer makes any changes to:
  - (i) the Goods; and/or
  - (ii) the Delivery Date or Collection Date (as applicable),such changes will be at the Customer's cost. System Rigging will notify the Customer of any additional charges related to any changes (including additional storage charges) and such charges must be paid in full before the Goods will be Delivered or made available for Collection from System Rigging (as applicable).

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## 4. PRICE AND PAYMENT

- (a) Unless otherwise set out in an invoice issued by System Rigging pursuant to clause 3(c), the Customer must pay the Purchase Price without deduction or set-off within thirty (30) days from the date of the invoice.

- (b) The Customer acknowledges and accepts that it is unreasonable to expect System Rigging to have knowledge of (or control over) price increases of goods purchased by System Rigging from its suppliers. Unless the Customer has instructed System Rigging to purchase goods and has fully paid for those goods in advance, System Rigging reserves the right to charge the Customer for any such price increases.
- (c) System Rigging reserves the right to increase prices if the Customer requests changes to quantities, specifications, the Delivery Date or Collection Date (as applicable) and any other changes or fails to provide System Rigging with clear or adequate instructions or information.
- (d) System Rigging may require a non-refundable deposit before accepting an Order for Goods by the Customer.
- (e) Payment shall only occur when cleared funds from the Customer have been received by System Rigging for all amounts outstanding.
- (f) System Rigging may, at its sole discretion and without prejudice to its other rights and remedies set out in this Agreement, withhold supply of any Goods and demand immediate payment of amounts owed if the Customer's account is overdue by sixty (60) days or System Rigging reasonably determines that the Customer is unable to pay.

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## 5. DELIVERY OR COLLECTION

- (a) If the Parties agree that System Rigging is responsible for Delivering the Goods to the Customer:
  - (i) System Rigging will use reasonable endeavours to Deliver the Goods to the Delivery Location by the Delivery Date; and
  - (ii) the Customer will provide such access and facilities to enable System Rigging to comply with its obligations without delay or disruption, and free from harm or injury (including access to the Delivery Location).
- (b) If the Parties agree that the Customer is responsible for Collecting the Goods from System Rigging:
  - (i) System Rigging will use reasonable endeavours to make available the Goods by the Collection Date at the Collection Location; and
  - (ii) the Customer agrees to Collect the Goods from the Collection Location by the Collection Date.
- (c) If this Agreement or the Order states that System Rigging is responsible for Delivery of the Goods to the Delivery Location, the Customer agrees to pay for all Delivery Costs.

- (d) The Delivery Date and/or Collection Date are best estimates only. While System Rigging will endeavour to have the Goods ready for Delivery or Collection on the Delivery Date or Collection Date and will notify the Customer in writing of any change to the Delivery Date or Collection Date, System Rigging is not liable to the Customer for any loss or damage arising from the Goods not being available for Delivery or Collection on the Delivery Date or Collection Date.
- (e) The Purchase Price does not include the cost of Delivering or Collecting the Goods. System Rigging may, but is not obliged to, provide the Customer with details of third parties that may provide services to Deliver the Goods to the Delivery Location or Collect the Goods from the Collection Location.

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## 6. DELAYS AND DISRUPTION

- (a) To the extent System Rigging is, or is likely to be, delayed or disrupted in supplying any Goods or Services due to:
  - (i) any fact, event, matter or circumstance beyond System Rigging's reasonable control; or
  - (ii) any breach, act or omission of the Customer, its agents or contractors,System Rigging is entitled to an extension of time in which it is required to supply those Goods or Services.
- (b) To the extent that System Rigging is entitled to further time under clause 6(a)(ii), the Customer must pay System Rigging its reasonable costs caused by the delay.
- (c) If any delay or disruption under clause 6(a)(ii) exceeds a single or aggregated period of 60 days, the relevant Order is deemed terminated at the convenience of System Rigging.

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## 7. RISK AND TITLE

- (a) Risk of loss of, or damage to, the Goods passes to the Customer immediately upon Dispatch of the Goods to the Customer or Collection of the Goods by the Customer (as applicable) and System Rigging will not be responsible for any loss or damage to the Goods occurring after such time and no such loss or damage will affect the obligations of the Customer to pay any amount relating to the sale of the Goods or otherwise payable by the Customer to System Rigging in accordance with this Agreement.
- (b) The Customer must insure the Goods at its own expense from the date of Dispatch or Collection.

- (c) Notwithstanding the passing of risk, legal and equitable title to the Goods will pass to the Customer on the date that the Customer pays the Purchase Price in full in accordance with this Agreement.
- (d) Until the Customer pays the Purchase Price in full, the Customer agrees that:
  - (i) it will store the Goods in a manner which shows clearly that the Goods are the property of System Rigging;
  - (ii) System Rigging will hold a general lien over any Goods owned by System Rigging that are in the Customer's possession, for the satisfactory performance of the Customer's obligations under this Agreement; and
  - (iii) this Agreement and the Customer's obligations under this Agreement create a registrable security interest in favour of System Rigging, and the Customer consents to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and the Customer must do all things necessary to enable System Rigging to do so).
- (e) Any payments made by or on behalf of the Customer which is later avoided by the application of any statutory provisions will be deemed not to discharge System Rigging's title in any Goods sold by System Rigging or the Customer's indebtedness to System Rigging.

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## 8. SERVICES

- (a) If System Rigging agrees to provide Services to the Customer (other than the sale of the Goods), including but not limited to the assembly, disassembly or installation of the Goods, instructing the Customer, its Personnel or any other person in the use or operation of the Goods, or operating or supplying an operator for the Goods:
  - (i) System Rigging will provide the Services on the terms specified in this clause 9, unless expressly agreed otherwise by the Parties in writing;
  - (ii) all costs, expenses and liabilities incurred or to be incurred by System Rigging or associated with providing the Services must be paid by the Customer to System Rigging on demand; and
  - (iii) System Rigging will not be liable for any delay or failure to supply the Services within any time period nominated or requested by the Customer.
- (b) The Customer:

- (i) releases and discharges System Rigging from all claims and demands on System Rigging and any loss or damage whatsoever and whenever caused to the Customer or any other person of any nature or kind; and
- (ii) indemnifies and holds System Rigging harmless from and against all claims, liabilities, losses, damages, costs or expenses incurred or suffered by System Rigging and from and against all actions, proceedings, claims or demands made against System Rigging, arising from the provision of the Services,
 

except to the extent due to the gross negligence, fraud or wilful misconduct of System Rigging in providing the Services.

- (c) Without limiting any other provision of this clause 9, any Personnel of System Rigging supplying or providing the Services for or on behalf of System Rigging to the Customer (unless agreed otherwise between the Parties) be deemed, from a liability standpoint, to be Personnel of the Customer for the period in which the Personnel are providing the Services.

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## 9. EXCLUSION OF LIABILITY

To the maximum extent permitted by law, the Customer agrees:

- (a) the Goods are sold "as is" without warranty of any kind, express or implied;
- (b) System Rigging exclude all warranties whether express, implied, statutory or otherwise relating in any way to the Goods and/or any other subject matter of this Agreement. Nothing in this clause restricts or modifies any right of remedy under the ACL;
- (c) to collect, use and possess the Goods entirely at the Customer's risk and the Customer agrees that System Rigging is not responsible or liable for any loss or damage as a result of use of the Goods by the Customer or any third party. To the maximum extent permitted by law, the Customer releases and discharges System Rigging and its agents and Personnel from:
  - (i) all claims and demands on System Rigging; and
  - (ii) any loss or damage whatsoever and whenever caused to the Customer,
 

arising directly or indirectly from or incidental to any defect in any Goods or any accident to or involving any Goods or their use, operation, repair, maintenance or storage

- (d) for any loss or damage which cannot otherwise be excluded by law, System Rigging's liability for any loss or damage which the Customer or any third party suffers arising from, caused or contributed to by, System Rigging's negligence, is limited to the Purchase Price paid by the Customer; and
- (e) neither party is liable to the other for any indirect or consequential loss or special damage incurred by the other party or in relation to this Agreement.

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## 10. INDEMNITY

To the maximum extent permitted by law, the Customer agrees that:

- (a) the Customer is liable for and indemnifies System Rigging against any and all liabilities, claims, action, damage, loss, costs, penalties and expenses (including legal fees and costs) which System Rigging suffers, incurs or is liable for in connection with:
  - (i) a breach by the Customer of this Agreement;
  - (ii) the Customer's use of the Goods; and/or
  - (iii) any other act or omission by the Customer pursuant to this Agreement or in relation to the Goods;
- (b) the indemnities and assumptions of liability contained in this clause 11 survive the expiry or termination of this Agreement.

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## 11. CANCELLATION, TERMINATION AND REFUNDS

### 11.1 Cancellation and Refunds

- (a) The Customer may terminate this Agreement and cancel the Delivery or Collection (as applicable) of Goods by notifying System Rigging in writing.
- (b) If the Customer cancels its Order and/or Delivery or Collection (as applicable) of the Goods:
  - (i) less than twenty four (24) hours after System Rigging accepts an Order from the Customer pursuant to clause 3, System Rigging will refund to the Customer any other amounts paid by the Customer under this Agreement; and
  - (ii) more than twenty four (24) hours after System Rigging accepts an Order from the Customer pursuant to

clause 3, System Rigging is not obliged to refund any amounts paid, or waive any amounts payable, by the Customer under this Agreement, in System Rigging's absolute discretion.

- (c) To the maximum extent permitted by law, the Customer agrees that no refunds of the Goods are available.

## 11.2 Default interest and costs

- (a) If an amount is due under this Agreement but is unpaid, interest shall be due on the overdue amount at the rate of 6% calculated monthly from the due date until the payment is received in full.
- (b) The Customer shall indemnify and reimburse System Rigging for all costs and disbursements in collecting outstanding debts from the Customer which shall include dishonour fees, full legal costs on a solicitor-own-client basis, collection agency costs, investigators costs, court, judgement enforcement and bailiff fees, search agent costs, time, travel and all other collection costs without exception.

## 11.3 Termination

- (a) System Rigging may terminate this Agreement at any time without liability to the Customer if:
  - (i) the Customer fails to pay the Purchase Price or other charges payable under this Agreement;
  - (ii) the Customer breaches any term of this Agreement;
  - (iii) the Customer fails to perform or observe any of the undertakings or provisions of this Agreement on the Customer's part to be performed or observed;
  - (iv) the Customer becomes bankrupt, insolvent or is placed into liquidation, administration or receivership;
  - (v) the Customer, being a natural person, dies; and/or
  - (vi) System Rigging considers, on reasonable grounds, that fulfilling its obligations under this Agreement may endanger the safety of any person or the condition of the Goods.
- (b) The Customer agrees that if System Rigging terminates this Agreement under clause 11(d), the Customer is not entitled to a refund of all or any part of the Purchase Price or any other payments made by the Customer under this Agreement.

## 12. CONFIDENTIALITY

- (a) Subject to clause 12(b), the Customer must (and must ensure that the Customer's Personnel do) keep confidential, and not use or permit any unauthorised use of, all Confidential Information.
- (b) Clause 12(a) does not apply where the disclosure of Confidential Information is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the Customer ensures that its advisers comply with the terms of clause 9(a).

## 13. INTELLECTUAL PROPERTY

- (a) All title, rights and interests in Intellectual Property developed by System Rigging is and will remain the property of System Rigging.
- (b) In dealing with the Intellectual Property, the Customer must:
  - (i) not disclose Intellectual Property to any other person and all reasonable precautions must be taken to protect such confidentiality;
  - (ii) use, copy, modify, reproduce or otherwise communicate the Intellectual Property without System Rigging's prior written consent; and
  - (iii) ensure that the Intellectual Property is not subjected to any treatment which is prejudicial to the reputation of, or which would infringe the rights of System Rigging.
- (c) All title, rights and interests in Intellectual Property that apply to all other Goods supplied by System Rigging remain with the manufacturer and/or developer of those Goods.
- (d) As it would be unreasonable to expect System Rigging to have any knowledge of the true owners of any title, right and interest in Intellectual Property pursuant to clause 14(c), System Rigging accepts no responsibility for inadvertent infringements of any such rights.

## 14. AUSTRALIAN CONSUMER LAW

- (a) Certain legislation, including the ACL, and similar consumer protection Laws and regulations, may confer the Customer with Statutory Rights.
- (b) If the ACL applies to System Rigging, nothing in this Agreement excludes the Customer's Statutory Rights under the ACL. The Customer agrees that System

Rigging's Liability for any Goods is governed solely by the ACL and this Agreement.

- (c) Subject to the Customer's Statutory Rights, System Rigging excludes all express and implied warranties, and all material, work and services (including the Goods) is provided to the Customer without any warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.

## 15. FORCE MAJEURE

System Rigging not be liable for any default or delay due to any act of God, war, utility and equipment failures, terrorism, industrial action, fire, flood, storm, tempest, pandemic and all other events beyond System Rigging's control without exception.

## 16. GENERAL

### 16.1 Notices

Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

### 16.2 Disputes

A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the law society of the State of Queensland to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause 16.2 will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

### 16.3 GST

If and when applicable, GST payable on the Purchase Price will be set out in the Schedule. The Customer agrees to pay the GST amount at the same time as the Customer pay the Purchase Price.

#### **16.4 Entire agreement**

This Agreement:

- (a) is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

#### **16.5 Severance**

If any clause or any part of any clause of this Agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

#### **16.6 Variation and waiver**

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the Party or Parties to be bound.

#### **16.7 Assignment**

The Customer must not assign or charge this Agreement or any of its rights or obligations under this Agreement without the prior written consent of System Rigging.

#### **16.8 Costs**

Each Party shall bear their own costs associated with this Agreement, including the preparation and negotiation of this Agreement.

#### **16.9 Time for doing acts**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or

- (ii) a notice period specified under this Agreement, expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5.00pm on the specified day, it is taken to have been done on the following Business Day.

#### **16.10 Counterparts**

This Agreement may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same. This Agreement is binding on the Parties on the exchange of counterparts. A copy of a counterpart sent electronically by email must be treated as an original counterpart.

#### **16.11 Governing law and jurisdiction**

This Agreement is governed by the laws of Queensland and the Parties submit to the jurisdiction of the courts of Queensland