

1. Definitions

- 1.1 “Contractor” means Kenway Trading Pty Ltd ATF B & K Kenway Trust T/A Safer Sites, its successors and assigns or any person acting on behalf of and with the authority of Kenway Trading Pty Ltd ATF B & K Kenway Trust T/A Safer Sites.
- 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 the Contractor 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 the Contractor to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Customer.
- 1.5 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Customer.
- 1.6 “Price” means the Price payable for the Goods as agreed between the Contractor 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 the Contractor’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor.

3. Change in Control

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

4. Price and Payment

- 4.1 At the Contractor’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Customer; or
 - (b) the Contractor’s 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 The Contractor reserves the right to change the Price if a variation to the Contractor’s 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 hidden or unidentifiable difficulties or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller’s 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 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 the Contractor, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by the Contractor.
- 4.4 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Contractor.
- 4.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor 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 the Contractor (or the Contractor’s 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 the Contractor’s 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 as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Contractor 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 the Contractor to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk to Goods

- 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, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 6.3 If the Customer requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

7. Title to Goods

- 7.1 The Contractor and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Customer has met all of its other obligations to the Contractor.
- 7.2 Receipt by the Contractor 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.
- 7.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to the Contractor on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor 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 the Contractor and must pay or deliver the proceeds to the Contractor 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 the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
 - (e) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.
 - (f) the Contractor 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 the Contractor.
 - (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 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 the Contractor to the Customer.
- 8.3 The Customer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor 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 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor 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 the Contractor;
 - (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 the Contractor;
 - (e) immediately advise the Contractor 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.
- 8.4 The Contractor 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.
- 8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Contractor, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

- 8.8 The Customer must unconditionally ratify any actions taken by the Contractor under clauses 8.3 to 8.5.
- 8.9 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 the PPSA.

9. Security and Charge

- 9.1 In consideration of the Contractor 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).
- 9.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Contractor's rights under this clause.
- 9.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.

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

- 10.1 The Customer must inspect the Goods/Equipment on delivery and must notify the Contractor 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 the Contractor to inspect the Goods/Equipment.
- 10.2 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**).
- 10.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Customer has paid for the Goods.
- 10.7 If the Customer is not a consumer within the meaning of the CCA, the Contractor's 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 the Contractor at the Contractor's sole discretion;
 - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
 - (b) the Contractor 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.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, the Contractor 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 the Contractor;
 - (e) fair wear and tear, any accident, or act of God.
- 10.10 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

11. Default and Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Contractor's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods/Equipment to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.

- 11.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12. Cancellation

- 12.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Goods/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels delivery of Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

13. Privacy Act 1988

- 13.1 The Customer agrees for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Contractor.
- 13.2 The Customer agrees that the Contractor may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Customer and Contractor or required by law from time to time):
- (a) the provision of Goods/Equipment; and/or
 - (b) the marketing of Goods/Equipment by the Contractor, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 13.5 The Contractor may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 13.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that the Contractor is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Contractor, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by the Contractor has been paid or otherwise discharged.

14. Building and Construction Industry Payments Act 2004

- 14.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

14.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

15. General

- 15.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 15.3 Subject to clause 10 the Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 15.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.6 The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide Goods/Equipment to the Customer.
- 15.7 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.
- 15.8 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.

Additional Terms & Conditions Applicable to Hire Only

16. Hire Period

- 16.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 16.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Customer from the Contractor's premises and will continue until the return of the Equipment to the Contractor's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 16.3 If the Contractor agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Contractor's premises and continue until the Customer notifies the Contractor that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 16.4 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 16.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Contractor confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Contractor immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

17. Risk to Equipment

- 17.1 The Contractor retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.
- 17.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Contractor for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 17.3 The Customer accepts full responsibility for and shall keep the Contractor indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

18. Title to Equipment

- 18.1 The Equipment is and will at all times remain the absolute property of the Contractor.
- 18.2 If the Customer fails to return the Equipment to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 18.3 The Customer is not authorised to pledge the Contractor's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

19. Customer's Responsibilities

19.1 The Customer shall:

- (a) notify the Contractor immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (c) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (d) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Contractor;
- (e) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (f) 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;
- (g) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (h) not exceed the recommended or legal load and capacity limits of the Equipment;
- (i) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (k) indemnify and hold harmless the Contractor in respect of all claims arising out of the Customer's use of the Equipment.

19.2 Immediately on request by the Contractor the Customer will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Contractor;
- (b) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (c) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
- (d) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Contractor's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.