

### 1. Definitions

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In this agreement:

**CCA** means the *Competition and Consumer Act 2010* (Cth);

**Customer** means the person/s buying the Goods or Services supplied by JMA .

**Delivery** has the meaning given to it in clause 6;

**Goods** means all Goods or Services supplied by JMA to the Customer (and may be used interchangeably with **Services**).

**Intellectual Property** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, service marks, data, designs, drawings, plans, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights;

**JMA Engineering (JMA)** includes its successors, assigns, related bodies corporate or any person acting on behalf of and with the authority of JMA Engineering.

**Price** means the Price payable by the Customer for the Goods or Services in accordance with clause 3.

**Security Agreement** has the same meaning as in the *Personal Property Securities Act 2009* (Cth);

1.1 In this agreement, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this agreement;
- (c) where any word or phrase is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (d) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (e) a reference to a statute or regulation includes all amendments, consolidations or replacements;
- (f) a reference to a party to a document includes that party's legal personal representatives, related bodies corporate, successors and permitted assigns;
- (g) including and similar expressions are not words of limitation.

### 2. Acceptance of Terms

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2.1 These terms and conditions together with any terms given on any quotation or invoice form this agreement (**Terms**). These Terms may not be varied unless expressly agreed to by JMA in writing.

2.2 The Customer is taken to have accepted these Terms if the Customer:

- (a) accepts a quotation for;
- (b) places an order for; or
- (c) accepts delivery of,  
the Goods.

- 2.3 Each occurrence of the event in clause 2.1 constitutes the Customer's acceptance and agreement to be bound by these Terms, which may be amended by JMA from time to time.
- 2.4 The Customer acknowledges that JMA may detail these Terms on its website, in which case the Customer is deemed to have notice of any such Terms or amendments and shall apply to any future dealings.
- 2.5 The Parties agree that these Terms supersede any other agreement between the Parties with respect to the Goods or Services (except for any special conditions agreed to between the Parties) and that in any event these Terms apply to any and every supply of Goods or Services by JMA to the Customer.

### **3. Price and Payment**

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- 3.1 The Customer will pay JMA the Price for the Goods or Services.
- 3.2 The Price is:
  - (a) as indicated on an invoice provided by JMA to the Customer; or
  - (b) JMA's quoted price (subject to clause 3.3) which will be valid for the period stated in the quote or otherwise for 30 days; or
  - (c) as otherwise specified by JMA.
- 3.3 JMA reserves the right to change the Price on any given quote if the Customer requests a variation, or the quote expires.
- 3.4 At JMA's sole discretion an advance payment may be required prior to the provision of Goods or Services.
- 3.5 Unless otherwise provided by JMA, payment must be made on delivery of the Goods or within 30 days of the invoice date (whichever is sooner) via electronic funds transfer.
- 3.6 Unless otherwise stated the Price does not include GST. Where GST is payable on a supply, JMA will add on any applicable GST to the Price payable by the Customer.
- 3.7 Receipt by JMA 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 accepted by JMA.

### **4. Customer's obligations**

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- 4.1 The Customer expressly acknowledges and warrants:
  - (a) to provide all information and documentation that JMA reasonably requires in order to provide the Goods or Services;
  - (b) to provide clear and free access to any work site at all times to enable JMA to provide the Goods or Services;
  - (c) that access to any work site is suitable to accept the weight of laden truck or equipment necessary to provide the Goods or Services;
  - (d) any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are suitable to handle the Goods once installed;
  - (e) that if, for any reason, JMA forms the opinion that the Customer's premises is not safe for JMA to provide the Goods or Services, then JMA may delay until the premises are made safe by the Customer, at the Customer's expense;
  - (f) that the Customer will, at its own cost, supply any ancillary services (such as water, electricity, gas and sewerage) when requested by JMA as necessary for the provision of the Services;
  - (g) that the Customer must advise JMA of the precise location of all underground services or utilities on any work site and clearly mark the same. These include, but are not limited to water, electrical, gas, oil, sewer, pumping, telecommunications and any other services that may be on site; and
  - (h) the Customer will use only JMA parts and labour with respect to the servicing of the Goods.

- 4.2 JMA shall not be liable for any harm, loss, damage, claim, injury (including death), cost or delay incurred by the Customer as a result of the Customer's act or omission in breach of clause 4.1.
- 4.3 The Customer agrees to indemnify JMA against all harm, loss, damage, claim, injury (including death), cost or delay suffered by JMA to the extent it was caused by an act or omission of the Customer in breach of clause 4.1. Without limitation, this includes:
- (a) any loss or damage to the site;
  - (b) the cost of recovering vehicles in the event they become bogged or otherwise immovable;
  - (c) any loss, damage or defects in the Goods however arising where parts and/labour were not provided or authorised by JMA.
- 4.4 While JMA will take care to avoid damage to any underground services the Customer agrees to indemnify JMA 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 4.1.

## 5. Default

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- 5.1 If the Customer does not make payment by the invoice due date, JMA is entitled to do any or all of the following, without prejudice to any other rights it may have and without liability to the Customer:
- (a) charge interest on the outstanding amount;
  - (b) require the Customer to pay, in advance, for any Goods or Services;
  - (c) suspend Delivery of Goods or Services;
  - (d) cancel this Agreement in accordance with clause 5.3.
- 5.2 The Customer shall indemnify JMA for all costs incurred by JMA in recovering outstanding debt(s) owed by the Customer to JMA.
- 5.3 Without prejudice to JMA's other remedies at law JMA shall be entitled to cancel all or any part of any Customer order which remains unfulfilled and all amounts owing to JMA shall, whether or not due for payment, will become immediately payable if:
- (a) any invoice payable to JMA becomes overdue, or in JMA's reasonable opinion the Customer will be unable to make a payment when the invoice falls due;
  - (b) the Customer becomes insolvent or convenes a meeting with its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer.
- 5.4 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 JMA nor to withhold payment of any invoice because part of that invoice is in dispute.

## 6. Delivery

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- 6.1 Goods are Delivered when:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at JMA' address; or
  - (b) JMA (or its nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 JMA may extend installation or completion dates by written notice to the Customer where an event beyond JMA's control occurs, including (but not limited to) the Customer's failure to comply with their obligations under clause 4;
- 6.3 JMA may add the costs of Delivery of the Goods to the Customer's account, which will be due and payable in accordance with these Terms. JMA may deliver Goods in separate instalments, each paid by the Customer.

- 6.4 In the event that the Customer is unable to take Delivery of the Goods as arranged then JMA shall be entitled to charge a reasonable fee for subsequent Delivery and/or storage.
- 6.5 Any time or date given by JMA to the Customer under this clause 6 is an estimate for convenience only and is not a binding term of this Agreement. JMA will not be liable for any loss or damage, including consequential losses, as a result of delayed Delivery.

## 7. Risk and title

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- 7.1 Sole risk in the Goods shall pass to the Customer on Delivery, as described in clause 6, including for loss, damage or injury to persons or property arising out of the Customer's use or possession of the Goods.
- 7.2 Ownership of the Goods shall not pass until:
- (a) the Customer has paid JMA all amounts owing to JMA; and
  - (b) the Customer has met all of its other obligations to JMA under this Agreement.
- 7.3 Irrespective of possession, while JMA holds ownership of the Goods pursuant to clause 7.1 the Customer:
- (a) must not mark, damage, destroy, alter or deface the Goods;
  - (b) must not allow any person to have or acquire any security interest in the Goods; and
  - (c) must maintain insurance for the Goods on or before Delivery for their full insurable or replacement value (whichever is the higher) with a reputable insurer.
- 7.4 Until ownership of the Goods passes to the Customer in accordance with clause 7.1:
- (a) the Customer is a bailee of the Goods and must return the Goods to JMA on request;
  - (b) if the Customer fails to pay for the Goods within the period of credit (if any) extended by JMA to the Customer, subject to, and in accordance with, the PPSA:
    - (i) JMA may recover possession of the Goods at any site owned, possessed or controlled by the Customer; and
    - (ii) the Customer agrees that JMA has an irrevocable licence to do so;
  - (c) the Customer holds the benefit of insurance for the Goods on trust for JMA's benefit and must pay to JMA the proceeds of any insurance if the Goods are lost, damaged or destroyed;
  - (d) 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 on trust for JMA's benefit and must pay or deliver the proceeds to JMA on demand;
  - (e) the Customer must 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 JMA's benefit and must sell, dispose of or return the resulting product to JMA as it so directs;
  - (f) the Customer irrevocably authorises JMA to enter any premises where JMA believes the Goods are kept and recover possession of the Goods;
  - (g) JMA may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (h) 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 JMA;
  - (i) JMA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer;
- 7.5 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, JMA is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by JMA is sufficient evidence of JMA's rights to receive the insurance proceeds.

- 7.6 If the Customer requests JMA to Deliver Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

## **8. Personal Property Securities Act 2009 (PPSA)**

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- 8.1 The Customer agrees and acknowledges that the title to goods supplied on credit is retained by JMA until such time that all debts are duly discharged, and that JMA's title is not displaced by possession of the goods by the Customer or any third party.
- 8.2 The Customer acknowledges and agrees that these Terms, and any subsequent sales agreements are an accepted and adopted Security Agreement between JMA and the Customer for the purposes of the PPSA, and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds). This Security Agreement between the parties includes any arrangements documented by emails or information or documents exchanged electronically.
- 8.3 In requesting JMA provide Goods, the Customer is deemed to have accepted this Security Agreement and any later amendments that may arise.
- 8.4 The Customer acknowledges, agrees and grants to JMA, a Security Interest in:
- (a) all Goods and any proceeds previously supplied or that will be supplied in the future by JMA to the Customer; and
  - (b) any proceeds that relate to the Goods purchased on credit by the Customer for the benefit of the Customer.
- 8.5 The above Security Interest secures all moneys owing by the Customer to JMA under these terms or otherwise.
- 8.6 The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- 8.7 The Customer acknowledges that the Security Interest over Goods or their proceeds arising under these terms as and where applicable will be a Purchase Money Security Interest (PMSI).
- 8.8 The Customer will do everything reasonably required of it by JMA to enable JMA to register its Security Interests with the priority it requires and to maintain those registrations, including to correct a defect in a financing statement.
- 8.9 The Security Interests arising under this clause 8 will be perfected by JMA prior to the Customer obtaining possession on Delivery of the Goods and the parties confirm they have not agreed that any Security Interest arising under this clause attaches at any later time.
- 8.10 JMA does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- 8.11 Any time the Customer makes a payment to JMA, irrespective of whether the payment is made under or in connection with this Agreement, JMA may apply that payment:
- (a) first to satisfy an obligation that is not secured;
  - (b) second, to satisfy an obligation that is secured, but not by a PMSI;
  - (c) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
  - (d) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source.
- 8.12 For the avoidance of doubt and without prejudice to JMA's rights under the PPSA, the Customer:
- (a) may sell the Goods to its customers and if it does so, then JMA will have a Security Interest in the proceeds of sale; and
  - (b) will, where and when applicable and instructed by JMA, implement, maintain and comply in all material respects with, procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.

- 8.13 The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- 8.14 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these terms as the Security Agreement between the Customer and JMA.
- 8.15 The Customer will notify JMA immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required under the PPSA in respect of these terms.
- 8.16 The Customer's right to possession of Goods still owned by JMA under these terms will cease if:
- (a) the Customer being an individual, commits an act of bankruptcy; or,
  - (b) the Customer being a corporation, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enters into a deed or scheme of arrangement; or
  - (c) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice; or
  - (d) the Customer fails to comply with any demand for payment issued by JMA; or
  - (e) the Customer is in breach any of these Terms or is in default of any other agreement with JMA.
- 8.17 The Customer agrees that JMA is entitled to exercise the rights contained in section 123 of the PPSA and enter any premises where the Goods supplied by JMA are still unpaid for, repossess such Goods. The Customer agrees to indemnify and keep JMA indemnified in respect of any claims, actions and costs that may arise against JMA in relation to the removal, repossession and sale of the Goods pursuant to these Terms including any claims brought by third parties.
- 8.18 The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to JMA by the Customer, as is equivalent to JMA's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has in relation to the Goods.
- 8.19 Until any obligations owed to JMA by the Customer are discharged in full, the Customer must not give JMA a written demand or allow any other person to give JMA a written demand requiring JMA to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR, a financing change statement.
- 8.20 The rights and obligations of JMA and the Customer under the Terms will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, heirs, executors and administrators.

## 9. Defects and Returns

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- 9.1 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 (**Non-Excluded Guarantees**). JMA acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
- 9.2 Except as expressly set out in these Terms, JMA makes no warranties or other representations with respect to the Goods including but not limited, to the quality or suitability of the Goods. JMA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 9.3 If the Customer is a consumer within the meaning of the CCA, JMA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 9.4 JMA's liability for any defect or damage in the Goods is, at JMA's option:
- (a) if the breach relates to goods then:
    - (i) replacement of the goods or the supply of equivalent goods;
    - (ii) repair of such goods;
    - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or



- (iv) payment of the cost of having the goods repaired; and
- (b) if the breach relates to Services the:
  - (i) supply of the Services again; or
  - (ii) payment of the cost of having the Services supplied again.

and in any event such liability is capped at the Price paid or payable by the Customer.

9.5 The Customer acknowledges that returns may only be accepted if:

- (a) JMA has agreed that the Goods are defective;
- (b) the Goods are returned within a reasonable time at the Customer's cost; and
- (c) the Goods are returned in as close a condition to that in which they were delivered as is possible, and JMA will only accept such a return in JMA's sole discretion and with its prior approval.

9.6 JMA shall not be liable for any defect or damage which may be caused or partly caused by or arises as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent user;
- (d) the Customer failing to follow any instructions or guidelines provided by JMA;
- (e) Goods or Services provided, serviced or modified by a party other than JMA;
- (f) fair wear and tear, any accident, or a Force Majeure event.

## **10. Intellectual Property**

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- 10.1 The Parties agree that, unless expressly provided for in these Terms, all Intellectual Property rights in connection with the Goods are reserved by JMA.
- 10.2 Where JMA has designed, drawn or developed Goods for the Customer, then the copyright and all intellectual property rights in these designs and drawings and documents shall remain the property of JMA.
- 10.3 The Customer warrants that all designs, specifications or instructions given to JMA will not cause JMA to infringe any patent, registered design or trademark in the execution of the Customer's Order and the Customer agrees to indemnify JMA against any action taken by a third party against JMA in respect of any such infringement.

## **11. Cancellation by JMA**

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- 11.1 JMA may, at any time and for any reason cancel any order of Goods or Services or cancel Delivery of Goods or Services.
- 11.2 In the event that JMA cancels an order or Delivery under clause 11.1, JMA will provide written notice of the cancellation to the Customer.
- 11.3 JMA shall not be liable for any loss or damage whatsoever arising from the cancellation and in any event, the Customer acknowledges that JMA's liability in relation to this clause is capped at the Price.
- 11.4 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss (including but not limited to, loss of profits) incurred by JMA as a result of the Customer's cancellation.

## **12. Exclusion and Limitation of Liability**

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- 12.1 Unless expressly stated, JMA makes no warranties under this agreement.

12.2 Subject to clause 12.3:

- (a) except for damages suffered by the Customer arising directly out of a breach of these Terms by JMA, JMA is not liable for any damage suffered (directly or indirectly) by the Customer arising in any way (including but not limited to, arising out of negligence by JMA or its employees, contractors or agents) out of the provision, delay in providing or failure to provide Goods under these Terms, or cancellation under these Terms;
- (b) JMA 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 JMA of these Terms; and
- (c) JMA's liability under this Agreement is limited to the Price.

12.3 JMA excludes all conditions and warranties implied by custom, the general law or statute to the maximum extent permitted by law.

### **13. Indemnity**

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13.1 The Customer indemnifies JMA against all expenses, losses, damages and costs (including legal costs) that JMA may sustain or incur as a result, whether directly or indirectly, of any breach of these Terms by the Customer, including but not limited to, a breach in respect of which JMA exercises its rights of cancellation under this agreement.

### **14. Privacy**

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14.1 The Parties agree to comply with their respective obligations under the *Privacy Act 1988*.

14.2 Notwithstanding clause 14.1, the Customer provides their express acknowledgement and consent to JMA obtaining or providing consumer credit information in accordance with the *Privacy Act 1988*.

14.3 The Customer further acknowledges and consents to JMA obtaining creditworthiness information from trade references prior to granting credit.

### **15. Compliance with Laws**

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15.1 The Customer shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

15.2 The Customer shall obtain (at their own expense) all permits, licences and approvals necessary for the Goods or Services.

15.3 The Customer warrants that any work site provided will comply with any work health and safety (WHS) laws and any other relevant safety standards, legislation or regulation.

### **16. Force majeure**

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16.1 Unless otherwise expressly provided for in these Terms, neither Party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond the first Party's reasonable control, including without limitation acts of God, fire, flood, pandemic, accident, terrorism, strike and riots.

### **17. General**

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17.1 The failure by JMA to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect JMA's right to subsequently enforce that provision. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These Terms and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts in South Australia.

17.3 JMA may license or sub-contract its rights or obligations under this Agreement at any time.



- 17.4 The Customer agrees that JMA may amend these Terms at any time. If JMA makes a change to these Terms, then that change will take effect from the date on which JMA notifies the Customer of such change, or when the amendment is published on the JMA website.
- 17.5 The Customer shall give JMA 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 JMA as a result of the Customer's failure to comply with this clause.
- 17.6 The Customer warrants that by applying its signature in whatever form or otherwise accepting these Terms in accordance with clause 2, the Customer:
- (a) has provided the requisite authority to be bound by these Terms; and
  - (b) it is not insolvent; and
  - (c) understands the nature and effect of the Terms.

## **ANNEXURE A: Additional Conditions relating to hire of Goods**

1. "Hirer" means and includes the person hiring the crane and/or truck and person tendering the goods for handling, lifting and/or carriage by the crane and/or truck, and every other person entitled to make any claim in respect of loss or damage to the goods.
2. JMA is not a common carrier and does not accept the obligations or liability of common carriers.
3. JMA may refuse the handling, lifting and/or carriage of Goods for any person, the handling, lifting and/or carriage of any class of goods, and will not handle, lift and/or carry goods at all except only upon the terms and conditions herein stated.
4. All goods are handled, lifted and/or carried at Hirer's risk. JMA shall not be liable for any loss or damage of whatsoever kind, howsoever occasioned at any time and whether caused by any acts, default or negligence of JMA or otherwise howsoever.
5. JMA shall not be liable for any death of or injury to any person including but not limited to the Hirer for any reason whatsoever including but not limited to the negligence or breach of contract or wilful act or default of JMA or others.
6. The Hirer agrees to be responsible for any loss or damage to the property of JMA and of other parties of whatsoever nature and howsoever caused which results from the use of the crane and/or truck or the handling, lifting, and/or carriage of the goods and to indemnify JMA and such other parties against the consequences thereof.
7. JMA shall have full liberty to arrange with any other person or company to undertake the handling, lifting and/or carriage of the goods and such person or company and his/her or its servants or agents shall be entitled to the benefit of these conditions to the same extent as JMA.
8. Goods of a noxious, inflammable, hazardous, dangerous or explosive nature shall not be tendered to JMA without prior full disclosure of the nature of the goods and may be handled, lifted and/or carried only by special agreement. If such goods be tendered otherwise the Hirer shall be liable for any loss or damage occasioned either directly or indirectly to JMA.
9. Where the Hirer has declared the weight of the goods and JMA has relied upon such declared weight the Hirer shall be responsible for all extra cost and risk incurred by JMA and shall be liable for any loss or damage occasioned directly to JMA by reason JMA having relied upon such declared weight.
10. The Hirer will be and remains responsible to JMA for all its proper charges incurred in respect of the hiring of the crane and/or truck and the handling, lifting or carriage of the goods including but not limited to any GST payable by JMA.
11. Insurance of the goods will not be affected by JMA for the benefit of the Hirer except upon the written instructions of the Hirer and then only at his/her expense and upon receipt of declaration of value a reasonable time prior to handling.
12. Charges will be computed from the time the unit leaves the depot of JMA until the time it returns to that depot, at the applicable rate to the unit.
13. Where a vehicle is delayed by any cause beyond the control of JMA or where the delay is caused by JMA obeying instructions given by the Hirer, or his/her representative, the cost of such delay shall be the Hirer's account. Where a vehicle is bogged whilst obeying such instructions, the cost of recovering the vehicle from the bog shall also be to the Hirer's account.
14. The Hirer shall not be entitled to damages or compensation from JMA for any loss suffered by reason of late delivery or breakdown of the plant or if JMA shall determine the Hirer or if the capacity of the plant is reduced or impaired by the condition of the place or which it is working.
15. Terms of payment are strictly nett 7 days — Should an account have to be placed into debt recovery consultants, then the Hirer automatically agrees to pay all expenses relating to the recovery of their incurred debt and any default debt may be reported to a credit reporting agency.
16. It is agreed that no servant or agent of JMA nor any other person has any power to waiver or vary any of the conditions hereof unless such waiver or variation is in writing signed by an executive officer of JMA.