

Liebherr-Australia Pty Ltd

Crawler Crane Sales Terms and Conditions

1 General

1.1 Liebherr-Australia Pty Ltd ACN 007 970 452 ("**Contractor**") agrees to sell, and the purchaser agrees to buy the Goods ("**Purchaser**") on and subject to the express terms of this Contract; and to the fullest extent not prohibited by law, no other terms including terms implied by law form part of this Contract, unless agreed and accepted in writing by the duly authorised representative of the Contractor.

1.2 In this Contract:

"Authorisation" includes but is not limited to application for import licence, performance of transport, performance of services, labour, temporary import licence for tools or other equipment of the Contractor necessary to perform the Contract or part of the Contract;

"Business Day" means any day that is not a Saturday or Sunday or a public holiday in South Australia;

"Contract" means the contract for the sale and purchase of the Goods between the Contractor as seller and Purchaser as purchaser comprising:

- (a) these express terms;
- (b) the Contractor's quotation for the Goods accepted by the Purchaser ("**Quotation**");
- (c) the Contractor's machine order confirmation or acknowledgement (if any) to the Purchaser for the Goods;
- (d) a variation to the Contract agreed in writing by the parties; and
- (e) any other document expressly referred to by the Contractor as part of the contract for the sale and purchase of the Goods.

"Event of Default" means any of the following events when the Purchaser is or has:

- (a) failed to pay the Contractor any amount under the Contract when due;
- (b) breached materially any of its other obligations under the Contract;
- (c) suffered an Insolvent Event;
- (d) is insolvent or is deemed to be insolvent within the meaning of section 9 of the *Corporations Act 2001* (Cth); and
- (e) fails to comply with its obligations under clause 10.

"Force Majeure Event" means any circumstances beyond the reasonable control of the parties including but not limited to:

- (a) acts of god, earthquake, tempest, unusual adverse climatic conditions;
- (b) labour conflicts or industrial disputes;
- (c) fires and explosions;
- (d) action or failure to act of public services or government authorities;
- (e) acts of war, sabotage, embargoes, insurrection, riots, breach of peace;
- (f) transportation interruptions or delays beyond the Contractors responsibility; or
- (g) general shortage of materials;

"Goods" means the goods as described in the Quotation;

"Insolvent Event" in relation to the Purchaser means:

- (a) an administrator or controller (each within the meaning of section 9 of the *Corporations Act 2001* (Cth) or in the case of New Zealand, the equivalent positions or capacities) is appointed over the Purchaser or any of its assets;
- (b) an application for a winding up order is made against the Purchaser and is not dismissed or withdrawn with fourteen (14) days of lodgement;
- (c) a winding up order is made or a winding up resolution is passed in relation to the Purchaser; or
- (d) the Purchaser enters into an arrangement with its creditors;

"Modern Slavery" has the meaning given to that term under the Modern Slavery Law;

"Modern Slavery Law" means the *Modern Slavery Act 2018* (Cth) and any other equivalent laws of any state/territory; and

"Small Business Contract" means a small business contract within the meaning of section 23(4) of the Australian Consumer Law.

2 Sale and Purchase

- 2.1 The Goods are sold and supplied by the Contractor to the Purchaser and the Purchaser purchases the Goods on and subject to the terms of the Contract including the specifications set out or referred to in the Contract. The Purchaser agrees that it has satisfied itself as to the suitability of the Goods for the Purchaser's intended application and has not relied on any statement or representation by the Contractor concerning the scope of supply, performance or characteristics of the Goods unless expressly incorporated in the Contract.
- 2.2 Where these terms and conditions are not a Small Business Contract, the Contractor reserves the right to modify or change the design of the Goods prior to delivery of the Goods without notifying any party and without obligation in regard to modification of other Goods of the same model.

3 Price and Payment

- 3.1 The Goods are sold and the Purchaser buys the Goods for the purchase price ("**Purchase Price**") payable by the Purchaser to the Contractor in accordance with the Contract.
- 3.2 Unless the Contractor and the Purchaser agree in writing otherwise, the Purchaser must pay to the Contractor the Purchase Price (or the balance thereof if the Purchaser has paid a deposit to the Contractor to which the Contractor shall be entitled absolutely, on and from delivery, subject to any other provisions of this Contract) and all other moneys payable by the Purchaser to the Contractor under this Contract prior to delivery of the Goods to the Purchaser.
- 3.3 In addition to the Purchase Price the Purchaser shall pay to the Contractor at the same time, an amount equal to any Goods and Services Tax ("**GST**") or similar sales taxes payable by the Contractor on or in relation to the sale and purchase of the Goods as notified by the Contractor to the Purchaser ("**GST Amount**").
- 3.4 If any law or regulation comes into force on or after the date of the Contract which increases or reduces the cost to the Contractor of performing the Contract ("**Cost Adjustment**"), the Contractor may elect to effect the Cost Adjustment as an increase or decrease to the Purchase Price.
- 3.5 Time is of the essence for payment of the Purchase Price and for each instalment thereof and the GST Amount.
- 3.6 Without limiting the Contractor's other rights under this Agreement or at law, if any moneys payable by the Purchaser to the Contractor under the Contract are not paid by the due date for payment:
- (a) the Contractor may impose, and the Purchaser shall pay a late payment interest of (i) ten percent (10%) per annum where these terms are not a Small Business Contract; or (ii) two (2%) per annum above the prevailing official cash rate as determined by the Reserve Bank of Australia in all other cases calculated daily on the overdue moneys up to the date of payment together with all other costs including, but not limited to legal fees on a solicitor client basis; or
 - (b) the Contractor may terminate this Contract wholly or partly in relation to the Goods.
- 3.7 The Contractor will be entitled to list the Purchasers' payment default(s) with the Credit Reference Association of Australia or other relevant credit reference organisations, which the Purchaser acknowledges may affect its credit rating.

4 Purchaser's General Obligations

- 4.1 The Purchaser shall provide or procure to be provided to the Contractor in a timely fashion all Purchaser and third-party approval, instruction, material, access to site or other thing which may be required by the Contractor for or in relation to the performance of any of the Contractor's obligations under the Contract and which is not expressly stated to be the Contractor's responsibility.
- 4.2 Unless otherwise agreed in writing as part of the Contract, any Authorisation required by any authority in the country of delivery, commissioning or use of the Goods to allow or in connection with allowing the Contractor to perform any of its obligations under this Contract shall be obtained by the Purchaser in a timely fashion and at no cost to the Contractor including, but not limited to, application for import licence, performance of transport, performance of services, labour, temporary import licence for tools or other equipment of the Contractor.

5 Delivery, Acceptance and Transfer of Title and Risk

- 5.1 All risks of loss or damage to the Goods shall pass to the Purchaser upon delivery of the Goods, unless otherwise provided in the Contract.
- 5.2 The Contractor will deliver the Goods to the Purchaser and the Purchaser will accept the delivery of the Goods:
- (a) at a place agreed in the Contract; or
 - (b) in the absence of express agreement, at the closest port to the Contractor's place of business nominated by the Contractor.

The stipulated delivery date is an indicative date only and if the Contractor delivers the Goods on that date or within a reasonable time thereafter, the Contractor thereby complies with its delivery obligations and shall not be in breach thereof.

- 5.3 The Purchaser accepts the Goods on delivery. It is the Purchaser's obligation and not the Contractor's obligation to apply for and obtain all necessary government agency and departmental approvals, consents and permits to transfer the Goods from the delivery location, to drive the Goods on any public or private road (including immediately following delivery of the Goods to the Purchaser) and to operate and use the Goods.
- 5.4 Property in and title to the Goods shall pass to the Purchaser free of encumbrances created by the Contractor when the Purchaser pays all amounts payable by the Purchaser to the Contractor in relation to the Goods under this Contract; and prior to such transfer, the Purchaser has no proprietary interest whatsoever in the Goods but if the Purchaser has taken delivery of the Goods, then the Purchaser is a mere bailee thereof pending payment of such moneys.
- 5.5 Where these terms and conditions are not a Small Business Contract, then upon the occurrence of an Event of Default, the Contractor may, for the purposes of any security interest arising or created in the Goods under or in relation to the Contract granted by the Purchaser in favour of the Contractor by operation of the PPSA, repossess and sell the Goods (and enter the Purchaser's premises for the purpose of doing so) and shall be entitled to exercise and enforce all rights granted by the PPSA in relation to such security interest in favour of the Contractor as the secured party.
- 5.6 Whilst the Goods are in the possession of the Purchaser and property and title thereto have not passed to the Purchaser under the Contract:
- (a) the Purchaser shall clearly identify the Goods as belonging to the Contractor; and
 - (b) the Purchaser must only use the Goods for the use intended by the manufacturer thereof and in accordance with the manufacturer's recommendations and directions; the Purchaser cannot modify, sell or otherwise remove, dispose or grant to a third party any interest (including any security interest) in the Goods and shall maintain the Goods in good condition and allow the Contractor unrestricted access to them for the purposes of inspection, testing, protection or removal.
- 5.7 Where these terms and conditions are not a Small Business Contract, and if an Event of Default occurs before title to and property in the Goods passes to the Purchaser the occurrence of such Event of Default constitutes a repudiation by the Purchaser of the Contract whereupon the Contractor may, in addition to any other rights and remedies the Contractor may have at law or under the Contract:
- (a) terminate the Contract by giving the Purchaser written notice to that effect whereupon the Purchaser shall return the Goods to the Contractor forthwith; and
 - (b) enter and the Purchaser consents to the Contractor or its agent entering any land or building owned, occupied, or used by the Purchaser, to search for and re-take possession of the Goods.
- 5.8 If the Contract is governed by the law of:
- (a) New Zealand: (i) PPSA refers to the Personal Property Securities Act 1999 (NZ); (ii) the Purchaser agrees that sections 114(1)(a), 117(1)(c), 133 and 134 PPSA shall not apply on the enforcement by the Contractor of any security interest created or provided for by these Contract; and (iii) waives any rights it may have under sections 116, 119, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement; or
 - (b) South Australia: (i) PPSA refers to the Personal Property Securities Act 2009 (Cth); (ii) the parties contract out of all the provisions mentioned in section 115(1) PPSA (except sections 123 and 128) and section 116(2) PPSA; and (iii) Purchaser hereby waives its right to receive from Contractor a notice of a verification statement referred to in section 157(1) PPSA.
- 5.9 The Purchaser will not change its name, company number or business number without giving the Contractor at least ten (10) days' prior notice of its proposed new name or number.

- 5.10 Unless this Contract states otherwise, the Purchaser enters into the Contract in its own right and not as trustee of any trust; if Purchaser enters into the Contract as trustee of a trust, the Purchaser shall disclose forthwith to the Contractor that fact and the Purchaser's Australian or New Zealand (as the case may be) Business Number of the trust and any security interest created by or arising under the Contract in or over the Goods shall apply to the Goods as property of that trust.

6 Storage

- 6.1 If the Purchaser does not take delivery of the Goods as contemplated by the Contract, the Contractor shall be entitled but without prejudice to the Contractor's rights at law in such circumstances:
- (a) to store the Goods at a place of business of the Contractor; or
 - (b) to put the Goods into storage with a third party at the expense of the Purchaser and the Purchaser appoints the Contractor as the agent of the Purchaser to contract for and on behalf of the Purchaser for the storage of the Goods and the Purchaser shall confirm everything done by the Contractor for that purpose. If the Contractor places the Goods into storage with a third party, the Purchaser shall pay to the Contractor all storage charges upon presentation of a warehouse receipt.
- 6.2 The Contractor shall give written notice to the Purchaser of the commencement of storage and the rates of storage, and the Purchaser shall pay the storage charges.
- 6.3 Where these terms and conditions are not a Small Business Contract, and if the Contractor stores the Goods at a place of business of the Contractor, the Purchaser shall pay to the Contractor storage charges calculated from day to day at a rate specified by the Contractor.
- 6.4 The Contractor may sue the Purchaser for and recover storage charges accrued from time to time as a debt due by the Purchaser to the Contractor whether the charges are for storage at the Contractor's premises (notwithstanding the lien conferred by these terms and conditions or by legislation) or in respect of storage by a third party whether or not such charges have been paid by the Contractor to the third party.

7 Variations

- 7.1 No variation to the Contract can be made unless agreed to in writing by the Contractor and the Purchaser.
- 7.2 If any variation increases or reduces the cost to the Contractor of performing the Contract, then the Purchase Price shall be adjusted accordingly.
- 7.3 The time for performance by the Contractor of any of its obligations under the Contract shall be extended in order to take into account the effect of any variation on the Contractor.

8 Warranty and Specifications

- 8.1 Where these terms and conditions are not a Small Business Contract, then to the fullest extent permitted by law, all terms implied by law as to the fitness for purpose, merchantability, defects and absence of defects, performance, quality and compliance with applicable standards, codes and laws of the Goods are hereby excluded.
- 8.2 Where these terms and conditions are not a Small Business Contract, the Goods are sold and delivered free and clear of all conditions, warranties and other terms about and in relation to the Goods except as expressly set out in this Contract and to the fullest extent permitted by law all terms implied in relation to this Contract whether by statute or otherwise are hereby excluded. The express terms of this Contract supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements between the Contractor and the Purchaser relating to the Goods and any part thereof.
- 8.3 At all times on and from the delivery of the Goods, it is solely the Purchaser's responsibility to safety check the Goods prior to operation of the Goods.
- 8.4 By taking delivery of the Goods, the Purchaser represents to the Contractor and is deemed to have represented to the Contractor that the Contractor has afforded the Purchaser a reasonable opportunity to inspect the Goods prior to delivery, the Purchaser has inspected the Goods prior to delivery and the Goods satisfy the Purchaser's application and intended use and comply with description and the terms of this Contract.

9 Intellectual Property Right Infringement

- 9.1 Throughout the Purchaser's use or ownership of the Goods, the Purchaser shall promptly notify the Contractor if the Purchaser becomes aware of any actual or potential third party claim against it or the Contractor concerning alleged infringement of any

third party patent, design, copyright, trademark or confidential information in relation to the Goods ("**Claim**"); and in the event of any such Claim, the Contractor may perform one of the following actions at its own expense and option:

- (a) modify or replace any alleged infringing part of the Goods to avoid any future infringement;
- (b) secure for the benefit of the Contractor and the Purchaser irrevocable and fully paid licenses at the Contractor's cost for the alleged infringing part of the Goods without the need to modify or replace the alleged infringing part.

- 9.2 Where these terms and conditions are not a Small Business Contract, then the Contractor shall have no liability or obligation to the Purchaser to the extent that any Claim of alleged infringement is based upon any use of the Goods in connection with or in combination with any goods, equipment, devices, or software not supplied by the Contractor, or any improper handling, storage, operation, or use of the Goods by the Purchaser or any third party.
- 9.3 Where these terms and conditions are not a Small Business Contract, then the foregoing constitutes the Purchaser's exclusive and entire remedy against the Contractor with respect to the infringement and alleged infringement of any third party patents, copyrights, design, trademarks or other intellectual property rights in or over the Goods.
- 9.4 Where these terms and conditions are not a Small Business Contract, then the Purchaser shall allow the Contractor or a member of the Contractor's corporate group nominated by the Contractor ("**Contractor Group**") to take over the defence of any Claim, in which event, the Contractor Group shall have the sole and exclusive right to control and conduct any associated negotiations, litigation, arbitration or settlement in relation to the Claim, and the Purchaser shall provide the Contractor Group with all reasonable assistance in defence of the Claim.
- 9.5 Where these terms and conditions are not a Small Business Contract, if the Contractor Group elects not to take over the defence of any Claim, all reasonable costs, expenses and fees of any kind (including reasonable attorneys' fees) incurred by the Purchaser in defending the Claim, shall be reimbursed by the Contractor, but the Purchaser shall not settle the Claim or make any agreement or compromise with respect thereto without the prior written consent of the Contractor Group, which consent shall not be unreasonably withheld; and reimbursement by the Contractor of such defence costs are subject to and form part of the maximum liability amount under this Contract.

10 Compliance with Laws

- 10.1 The Purchaser warrants and represents that the Purchaser, its officers, employees, contract employees, directors and agents shall comply with all applicable laws, codes and regulations ("**Applicable Laws**").
- 10.2 Where these terms and conditions are not a Small Business Contract, and without limiting any other indemnity provision set forth herein, the Purchaser shall indemnify and hold the Contractor harmless from and against all costs, loss, damage and expense, including reasonable attorney's fees, incurred by the Contractor as a result of or arising out of the breach of the above warranty.
- 10.3 Where these terms and conditions are not a Small Business Contract, the Purchaser shall maintain appropriate records to substantiate its compliance with the above and provide such evidence of compliance to the Contractor as the latter may reasonably request. The Contractor may also designate independent auditors to audit the book and records of the Purchaser on a confidential basis to clear and confirm specific events of suspicion.

11 Limitation of Liability

- 11.1 Where these terms and conditions are not a Small Business Contract, then the Contractor, The Contractor's sub-contractors and their respective employees and agents (in this clause 11 referred to as the "**Contractor and its Associates**") shall not be liable for and the Purchaser hereby releases them and each of them from all liability to the Purchaser for indemnity, breach of contract, tort (including but not limited to negligence of the Contractor or its Associates), breach of statutory obligation or otherwise for and in relation to:
- (a) any loss of profit, loss of use, loss of production, loss of contract, increase in operating costs or other financial or economic loss and any indirect or consequential loss or damage whatsoever or liability for same incurred or suffered by the Purchaser;
 - (b) any misrepresentation or alleged misrepresentation by the Contractor in relation to the Goods that is not a term of this Contract; and
 - (c) any loss or damage suffered or incurred by the Purchaser to the extent that any liability of the Contractor and its Associates for such loss or damage and all expenses and fees incurred by the Purchaser in enforcing its rights (if any) in relation to such loss or damage exceeds in aggregate the moneys paid by the Purchaser to the Contractor under this Contract.
- 11.2 Where these terms and conditions are not a Small Business Contract, then the Purchaser shall indemnify the Contractor (for themselves as well as on behalf of any members of their respective company group) from and against any and all liabilities,

claims and costs (including the Contractor's legal and consultant costs on a solicitor client basis) incurred or sustained by the Contractor (for themselves as well as on behalf of any members of their respective company group) for or in relation to:

- (a) pollution or release of substances capable of causing harm to living organisms or interference with ecological systems arising from the Goods or use thereof;
- (b) any losses, damages and liabilities referred to in clauses 11.1(a) or (b);
- (c) amounts in excess of the liability amount referred to in clause 11.1(c); and
- (d) any third-party loss or damage,

caused by arising from this Contract, any performance or breach hereof by the Contractor, any representation by or conduct (including omissions) of the Contractor or its Associates in relation to this Contract, the sale and/or supply of the Goods to the Purchaser or use of the Goods.

11.3 This clause 11 is intended to survive termination and completion of this agreement.

11.4 The Contractor holds the benefit of this clause 11 on trust for the Contractor and its Associates and all such persons, firms or companies shall be and be deemed to be beneficiaries thereof and may enforce and enjoy the limitations, exclusions and benefits of this clause 11 in their own name.

12 Force Majeure

- 12.1 If performance of any obligation of the Contractor under the Contract is prevented, restricted or delayed by any Force Majeure Event, the Contractor shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly.
- 12.2 In case the Contractor considers that an event shall be considered as a Force Majeure Event may affect the provision of Goods, the Contractor shall inform the other party within a period of ten (10) Business Days counted from the date that the party was informed of or became aware of the Force Majeure Event.
- 12.3 Any reasonable additional costs due to a Force Majeure Event incurred by the Contractor to continue to perform its obligations under the Contract so far as reasonably practicable shall be certified and added to the Purchase Price.
- 12.4 If the Contractor's performance is restricted, prevented or delayed for more than three (3) months by any Force Majeure Event and the parties have not agreed in writing upon a revised basis for continuing this Contract, then either party may after that three (3) month period and while the Force Majeure Event still exists, terminate this Contract by giving to the other party notice in writing of such termination.

13 Termination by the Contractor

13.1 Where these terms and conditions are not a Small Business Contract, then the Purchaser repudiates this Contract if:

- (a) the Purchaser fails or omits for any reason to pay to the Contractor when due, any moneys payable under this Contract by the Purchaser to the Contractor; or
- (b) the Contractor tenders the Goods for delivery to the Purchaser but the Purchaser refuses or fails to receive the Goods or any portion thereof; or
- (c) prior to payment in full of the Purchase Price and any other moneys payable under this Contract by the Purchaser to the Contractor, (i) where the Purchaser is a body corporate – a controller, administrator or liquidator (each as defined in section 9 of the Corporations Act 2001 (Cth) or its New Zealand equivalent if the Purchaser is a New Zealand resident) is appointed over the Purchaser or any of its assets or undertaking; or (ii) where the Purchaser comprises one or more natural persons - one or more of them is or becomes bankrupt or enters into a Part 10 arrangement for the purposes of the Bankruptcy Act 1966 (Cth) or its New Zealand equivalent if the Purchaser is a New Zealand resident; or (iii) the Purchaser is insolvent.

whereupon the Contractor may accept such repudiation and terminate this Contract; and on and from termination of this Contract by the Contractor:

- (a) the Contractor shall be entitled to retain any monies already paid to it by the Purchaser absolutely;
- (b) each party shall be released from further performance of their respective obligations hereunder (except any obligation expressed or intended to survive termination) but without prejudice to any rights or causes of action at law or otherwise arising from termination or breach of this Contract occurring prior to termination of this Contract; and
- (c) the Contractor is free to deal with the Goods as it sees fit.

14 Cross Default

- 14.1 Where these terms and conditions are not a Small Business Contract, any Event of Default or other financial indebtedness by the Purchaser, whether under this Agreement or another agreement with the Contractor becomes, at the sole discretion of the Contractor, immediately due and payable, or becomes capable of being declared immediately due and payable by the Contractor, before the scheduled date for payment.
- 14.2 Where these terms and conditions are not a Small Business Contract, the exercise of this clause 14 by the Contractor does not, in any way, interfere with the Contractor's right to exercise any other rights following an Event of Default by the Purchaser under this Agreement.

15 Modern Slavery

- 15.1 The parties must:
- (a) not itself directly engage in Modern Slavery, or do anything that would be an offence under the Modern Slavery Law;
 - (b) upon request by a party, provide that party with reasonable access to its records and premises for the purposes of the Modern Slavery Law;
 - (c) report to a party any actual or suspected instances of Modern Slavery in its supply chain; and
 - (c) cooperate with a party (to the extent reasonably required by law) to facilitate training of its employees, suppliers and sub-contractors on the Modern Slavery Law.

16 Dispute Process

- 16.1 Each party has a general obligation to co-operate in good faith.
- 16.2 A party claiming that a dispute has arisen must notify the other party of the dispute and provide details of the dispute ("**Dispute Notice**").
- 16.3 Within seven (7) days (or longer if agreed between the parties) after receipt by the other party of a Dispute Notice, the dispute must be referred to the senior management of the parties for resolution.
- 16.4 If senior management does not resolve the dispute in accordance with clause 16.3 within twenty-one (21) days after receipt by the other party of the Dispute Notice, the parties must refer the dispute for mediation by a mediator appointed by the parties. If the parties are unable to agree on a mediator within twenty-eight (28) days after receipt by the other party of the Dispute Notice, the mediator will be a person appointed by the then President of the South Australian Law Society.
- 16.5 If the dispute is not resolved under clause 16.4 within thirty (30) days (or any longer period agreed between the parties) after a mediator is appointed, either party may initiate proceedings in a court. Until such time, neither party may initiate court proceedings except for urgent interlocutory applications.
- 16.6 Any information or document disclosed under this clause 16 shall be kept confidential and shall only be used in attempt to resolve the dispute.
- 16.7 Each party shall bear its own costs of complying with this clause 16 and will share equally the costs of the mediation.

17 General

- 17.1 The Contract is governed by, and shall be construed in accordance with:
- (a) the law of South Australia for Australian Purchasers and other Purchasers excluding New Zealand; or
 - (b) the law of New Zealand for New Zealand Purchasers.
- 17.2 Any unlawful or voidable provision in this Contract shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Contract without effecting the validity, legality or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Contract.
- 17.3 The Purchaser must not assign in whole or part any of its rights or obligations under this Contract without the prior written consent of the Contractor. The Contractor may assign or transfer any of its rights or obligations under this Contract. Each assignee or transferee will have the same rights against the Purchaser under this Contract as if named as Contractor. Without limitation to the foregoing, Contractor may at any time without the consent of the Purchaser assign, transfer, mortgage, charge, grant a security interest over, declare a trust in respect of, or in any other way dispose of, all or any part of Contractor's rights

(including rights to receive payment of money), interests, benefits, claims or title to the same under or in connection with this Contract in connection with any sale of accounts receivable arising in connection with Equipment purchased by the Purchaser under this Contract to a financier of Contractor's choice. An assignment of rights only by Contractor under this clause does not relieve Contractor from any of its obligations or liabilities arising under this Contract.

- 17.4 The parties shall keep the existence, the subject matter and the terms of this Contract confidential and no announcement or disclosure shall be made as to the existence of this Contract or its subject matter except in such form and manner and at such time as the parties agree (such agreement not to be unreasonably withheld except where it may materially prejudice the performance of this Contract) or as may be required by law or in good faith in implementing the provisions of this Contract.
- 17.5 Where the Purchaser is not a Small Business Contract, it represents and warrants in favour of the Contractor that as at the date of this Contract, it employs 100 or more full-time employees or had AUD10,000,000 or more in turnover for the last income year that ended on or before date of this Contract. In giving this representation and warranty, the Purchaser confirm that it has considered Schedule 2, Part 2-3 of the *Competition and Consumer Act 2010* (Cth).