



1 Definitions and Interpretation

1.1 Definitions

In this Document, capitalised terms have the following meaning:

Additional Costs means any additional costs, expenses, damages or losses suffered or incurred by the Provider.

Adverse Site Conditions means any access obstructions (e.g. stairs, entrance height/width restrictions etc.), or any site conditions on, at or near the Premises which may cause the Provider to incur delay, increased attendance costs, or require additional work (including for additional site preparation) beyond the allowances set out in the Quotation.

Business Day means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

Corporations Act means the *Corporations Act 2001* (Cth).

Defect has the meaning given in clause 4.7(a).

Delivery Condition means the condition of the Goods upon delivery of the Goods at the Premises in accordance with this Document or as determined by clause 4.1(c).

Delivery Date/Hire Start Date means the date for delivery, or pick-up, of the Goods from the Premises, as set out in the Quotation.

Document means this document and all documents referred to, or attached to this document.

Effective Date means the date on which this Document is accepted by the Client in accordance with its terms.

Hire End Date is set out in the Quotation, noting that, where the Goods are being hired, for the purpose of the Client's obligations under this Document, the Hire End Date will only occur once the Goods are returned

to the Provider in the Delivery Condition (or as otherwise agreed in writing by the Parties).

Goods are set out in the Quotation.

Hire Period means the period of hire of the Goods which will commence on the Hire Start Date and continue until the Hire End Date, unless terminated earlier under this Document.

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

Party means a party to this Document, and **Parties** means all of them.

Personnel means in respect of the:

- (a) Provider, any of its employees, consultants, suppliers, subcontractors or agents; and
- (b) Client any of its employees, consultants, suppliers, subcontractors, invitees, agents or any other party that is permitted to use the Goods.

Personnel Personal Property Securities Register or **PPSR** is the system of registration and priority created pursuant to the *Personal Property Security Act 2009* (Cth).

Product Care and Maintenance Manual means the Product Care and Maintenance Manual provided by the Provider, from time to time.

Provider's Warehouse has the meaning given in the Quotation.

Quotation means the quote to which these terms and conditions are attached.

Security Deposit is set out in the Quotation.

Specification means the document (if any) detailing the Client's requirements for the Goods referred to in the Quotation.

2 Acceptance

(a) This Document is between Rock Chucker Pty Ltd ATF Stones Family Trust trading as Castle and Cubby (ABN 85 913 799 098), its successors and assignees (referred to as the **Provider**) and the person, organisation or entity that purchases or hires the Goods as specified in the Quotation (referred to as the **Client**).

(b) Any Quotation provided is subject to (and incorporates) the terms, conditions and documents attached to, or referred to in, these terms, which, together with the Quotation, form this **Document**.

(c) The Client is taken to have accepted this Document by:

- (1) paying the Deposit or any other part of the Price;
- (2) providing confirmation via email or orally to the Provider; or
- (3) instructing the Provider (whether in writing or orally) to proceed with the provision of the Goods.

3 Commencement and Delivery Date

- (a) This Document takes effect on and from the Effective Date. No cancellations by the Client will be accepted by the Provider after the Effective Date, other than in accordance with clause 7.
- (b) The Provider will proceed with the provision of the Goods or Services within a reasonable time after the later of:
 - (1) the Effective Date;
 - (2) receipt of full payment of the Deposit from the Client (if applicable); and
 - (3) the satisfaction of any other conditions precedent contemplated by this Document.
- (c) Despite any provision of this Document to the contrary, the Client acknowledges and agrees that the Delivery Date/Hire Start Date is an estimate only, and the Provider will not be liable for any failure or delay in supplying the Goods by the Delivery Date/Hire Start Date.

4 Goods and Services

4.1 Where Goods are being hired

- (a) This clause 4.1 applies where the Goods are being hired by the Client.
- (b) The Goods will be either delivered to the Premises by the Provider, or retrieved from the Provider's Warehouse by the Client, on the Hire Start Date ("**Delivery**"), as set out in the Quotation.
- (c) The Goods will be Delivered in the Delivery Condition. Unless the Client notifies the Provider in writing within 2 hours of Delivery, demonstrating that the Goods do not comply with this Document, the Client agrees that the Goods have been delivered in good condition, free from any defects or damage and in accordance with this Document.
- (d) If the Client provides the Provider with a notice under clause 4.1(c):
 - (1) the Provider may, at its sole discretion, either replace the relevant Goods, or refund that portion of the Price to which the relevant Goods relate; or
 - (2) the Client may agree to accept the Goods in the condition provided, and the Client acknowledges that the relevant Goods will be considered to be the "Delivery

Condition" for the purpose of this Document.

- (e) The Client acknowledges and agrees that:
 - (1) at all times, the Provider owns the Goods and the Client takes the Goods as a bare bailee only; and
 - (2) it must grant the Provider (or its Personnel) all rights of access and permissions necessary to retrieve the Goods from the Premises at the end of the Hire Period.
- (f) During the Hire Period, the Client:
 - (1) must protect the Goods and keep them in good condition and, in any event, in the Delivery Condition;
 - (2) must store the Goods as instructed by the Provider, and in any event, in a suitable, dry, bright and well drained area;
 - (3) must not remove, disassemble, alter, modify or otherwise tamper with the Goods, or allow any other person to do so, other than as instructed by the Provider;
 - (4) will be responsible for wear and tear of the Goods, and for any loss, theft, damage or destruction of or to the Goods; and
 - (5) acknowledges that no loss, theft, damage or destruction will impair or frustrate any of the Client's obligations under this Document (including without limitation, compliance with the Payment Terms).

4.2 Where the Goods are being purchased

- (a) This clause 4.2 applies where the Goods are being purchased by the Client.
- (b) The Goods will be either delivered to the Premises by the Provider, or retrieved from the Provider's Warehouse by the Client, on the Delivery Date, as set out in the Quotation.
- (c) In consideration of the Client's payment of the Price, the Provider will provide the Goods or Services in accordance with this Document, whether itself or by using its Personnel.

4.3 Storage, use and maintenance of the Goods

- The Client acknowledges and agrees that the Goods:
- (a) are primarily made from untreated natural degradable materials;
 - (b) are made with materials which are fragile and need to be handled by the Client (and its Personnel) with care and in accordance with the Product Care and Maintenance Manual; and
 - (c) the Client must store, use and maintain the Goods in accordance with the Product Care and Maintenance Manual.

4.4 Variations

The Client may request a change to the Goods or Services by providing written notice to the Provider ("**Variation Request**"). The Provider will not be obliged to comply with the Variation Request until:

- (a) the Provider has confirmed its acceptance of the Variation Request in writing, including any required variation to the Price to perform the Variation Request ("**Price Variation**");
- (b) the Price has been adjusted to reflect the Price Variation; and
- (c) the Client has paid the Provider the Price (as adjusted by the Price Variation) in accordance with the Payment Terms.

4.5 Delivery

- (a) Unless specified otherwise in the Quotation, all costs associated with the loading, transport, delivery, and unloading of the Goods to and from the Premises (including costs associated with installation and packing down) is the Client's responsibility.
- (b) If the Goods are being picked-up from the Provider's Warehouse by the Client or its Personnel, the Client must (and must ensure that its Personnel):
 - (1) arrive at the Premises on the Delivery Date/Hire Start Date and at the time nominated or notified by the Provider (whether orally or in writing); and
 - (2) comply with all requirements, protocols, policies, procedures and directions of the Provider and its Personnel.
- (c) If the Goods are being delivered to the Premises by the Provider or its Personnel, the Client acknowledges and agrees that:
 - (1) the Provider requires the Client to provide clear level and unobstructed access to the Premises, with a minimum entry access as specified in the Quotation, to deliver and/or install the Goods;
 - (2) the Provider has provided the Quotation on the assumption that the Client will provide access in accordance with clause 4.5(c)(1), and that the site preparation required to install the Goods will not exceed the allowance set out in the Quotation; and
 - (3) it must promptly, and in any event no later than 48 hours before the Delivery Date, notify the Provider, of any potential Adverse Site Conditions.
- (d) The Client must provide to the Provider (and its Personnel) unfettered access to the Premises, free from harm or risk to health or safety to

enable the Provider to comply with its obligations under this Document or at law.

- (e) The Client must ensure that it or its Personnel do not cause or contribute to any injury to the Provider or its Personnel or loss of, or damage to, their property.

4.6 Title and risk

- (a) Where the Goods are being hired, title in the Goods will remain at all times with the Provider, and the Client must not do anything which seeks to create an encumbrance, lien, charge or other interest on or over the Goods.
- (b) Where the Goods are being purchased, title in the Goods will remain with the Provider until the Client has paid the Provider the Price in full in accordance with this Document. Until title passes, the Client must not do anything which seeks to create an encumbrance, lien, charge or other interest on or over the Goods.
- (c) Risk in the Goods will pass to the Client:
 - (1) where the Goods are being collected by the Client from the Premises, the point of collection, and prior to loading of the Goods;
 - (2) where the Goods are being delivered by the Provider to the Premises, immediately upon the dispatch of the Goods at or from the Provider's Warehouse.
- (d) Once risk in the Goods passes:
 - (1) where the Goods are being purchased, the Client will be solely responsible for the Goods; or
 - (2) where the Goods are being hired, the Client will remain responsible for the Goods until the Hire End Date.
- (e) This clause 4.6 will survive the termination or expiry of this Document.

4.7 Defects

- (a) Where the Client is purchasing the Goods, the Client must inspect the Goods upon delivery, collection or installation, and notify the Provider in writing within 48 hours after the delivery, collection or installation of the Goods if the Client discovers any fault, defect or error in the workmanship of the Goods, which is caused by a breach of this Document by the Provider (**Defect**), along with a photo and description of the relevant Defect.
- (b) If the Client fails to notify the Provider of a Defect within the time specified in clause 4.7(a), the Client will be deemed to have accepted that the Goods are suitable, fit for purpose and in accordance with this Document, and to the maximum extent permitted by law, the Provider

will have no Liability to the Client in respect of the Goods.

- (c) If the Client notifies the Provider in accordance with clause 4.7(a), the Provider will, at its own cost and sole discretion:
- (1) repair or remedy the Defect; or
 - (2) if it is unable to repair or remedy the Defect, offer the Client a choice of a credit or a refund with respect to that part of the Price applicable to the Defect.
- (d) If requested by the Provider, the Client must make available for collection, or return, to the Provider the Goods the subject of a notice under clause 4.7(a), together with all packaging, parts, accessories and documentation which were handed over by the Provider with the Goods.
- (e) Despite anything to the contrary, to the maximum extent permitted by law, the Provider's aggregate Liability for any fault, defect, error, omission or lack of functionality or suitability with respect to the Goods will be limited to, and must not exceed, the costs it incurs in complying with clause 4.7(c)(1) or 4.7(c)(2) (as applicable). This clause 4.7(e) will survive the termination or expiry of this Document.
- (f) In Australia, the Goods come with guarantees which cannot be excluded under the Australian Consumer Law. Nothing in this Document attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law. The Client is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Client is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

5 Client's obligations

5.1 General

- (a) The Client must comply with:
- (1) this Document;
 - (2) all reasonable requests or requirements of the Provider; and
 - (3) all laws.
- (b) The Client must:
- (1) obtain, and provide to the Provider, any access, consents, approvals, licences and permissions necessary to enable the Provider to provide the Goods and Services and comply with its obligations under this Document; and
 - (2) not re-hire the Goods or otherwise commercialise the Goods, without the Provider's prior and express written consent.

5.2 Payment

- (a) The Client must pay the Provider:
- (1) the Price; and
 - (2) any other amount payable to the Provider under this Document,
- in accordance with the Payment Terms.
- (b) If any payment has not been made in accordance with the Payment Terms, the Provider may (at its absolute discretion):
- (1) immediately cease providing the Goods or Services, and recover as a debt due and immediately payable from the Client its Additional Costs of doing so;
 - (2) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date;
 - (3) engage debt collection services and/or commence legal proceedings in relation to any such amounts; and/or
 - (4) report the Client to any independent credit data agencies.

5.3 Assistance

The Client must provide all assistance (including information or documentation) which the Provider requests, to enable the Provider to comply with its obligations under this Document or at law.

5.4 Survival

This clause 5 will survive the termination or expiry of this Document.

6 Limitations

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) the Provider's maximum aggregate Liability arising from or in connection with this Document (including the Goods or Services and/or the subject matter of this Document) will be limited to, and must not exceed, the portion of the Price paid by the Client to the Provider for the Goods or Services the subject of the relevant claim; and
- (b) the Provider will not be liable to the Client for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;

- (c) the Provider will have no Liability, and the Client releases and discharges the Provider from all Liability, arising from or in connection with this Document to the extent the Liability was caused or contributed to by any:
 - (1) event or circumstance beyond the Provider's reasonable control;
 - (2) act or omission of the Client or its Personnel; or
 - (3) any defect, error, omission or lack of functionality or suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Goods or Services;
- (d) this Document excludes all terms, conditions, representation, warranties or statements implied by statute, in fact or on any other basis, except to the extent such terms, conditions, representations, warranties or statements are fully expressed in this Document;
- (e) the Client is liable for and agrees to indemnify, defend and hold the Provider harmless for and against any and all Liabilities resulting directly or indirectly from:
 - (1) the use or presence of the Goods at the Premises;
 - (2) any loss, theft, damage, destruction, or wear or tear caused to the Goods at the Premises; and/or
 - (3) any acts or omissions of the Client or any of its Personnel, including any of their breach of any provision of this Document, any law or any third party rights.
- (f) This clause 6 will survive the termination or expiry of this Document.

7 Cancellation

The Client acknowledges and agrees that:

- (a) where the Goods are being purchased, if the Client cancels an order for any reason:
 - (1) the Provider may, at its sole discretion, refund or retain the Deposit; and
 - (2) the Client must pay the Additional Costs that the Provider suffers or incurs up to the date of cancellation.
- (b) where the Goods are being hired:
 - (1) if the Client cancels an order for any reason more than 2 weeks prior to the proposed Hire Start Date, the Provider may retain the Deposit; or
 - (2) if the Client cancels an order for any reason within 2 weeks or less of the proposed Hire

Start Date, the Provider may retain the Price in full; and

- (c) the amounts recoverable by the Provider under this clause 7 are fair and reasonable in the circumstances, and constitute a genuine pre-estimate of the losses suffered or incurred by the Provider as a result of the Client's cancellation.

8 Termination

- (a) This Document will terminate immediately upon written notice by:
 - (1) either Party, if mutually agreed in writing between the Parties; or
 - (2) the Provider, if the Client is in breach of this Document and that breach has not been remedied within five Business Days of being notified by the Provider.
- (b) Termination of this Document will not affect any rights or liabilities which a Party has accrued under it.
- (c) Upon termination of this Document, the Client agrees that it will (and will ensure that its Personnel):
 - (1) pay the Price and all Additional Costs resulting from the termination of this Document on full as a debt due and immediately payable;
 - (2) not disparage or otherwise make any unfavourable statements or comments regarding the Provider or its Personnel, either directly or by implication, verbally or in writing;
 - (3) immediately return to the Provider all property, including Confidential Information and Intellectual Property belonging to the Provider or its Personnel, in its or its Personnel's possession;
 - (4) allow the Provider (or Personnel) to immediately retrieve the Goods from the Premises, which will be at the Client's cost ; and
 - (5) not use any Intellectual Property belonging to the Provider or its Personnel.
- (d) This clause 8 will survive the termination or expiry of this Document.

9 Security Deposit

- (a) This clause 9 only applies where the Client is hiring Goods, and where indicated on the Quotation as applying.
- (b) No later than 48 hours prior to the Hire Start Date, the Client must pay the Security Deposit to the Provider in the amount stipulated in the Quotation, and maintain the value of the Security Deposit for the Hire Period.

- (c) The Provider may draw on the Security Deposit to recover any cost, loss, damage or expense suffered or incurred by it as a result of the Client's breach of this Document (including the cost of cleaning, repairing or replacing any lost, stolen, damaged or destroyed Goods), and the Client must pay whatever further amount is required to bring the Security Deposit back to the amount stipulated in the Quotation.
- (d) As soon as practicable after the later of:
- (1) the Hire End Date;
 - (2) the date the Goods are returned to the Provider in the Delivery Condition, as determined by the Provider;
 - (3) the Client has performed all of its obligations under this Document; and
 - (4) the Client has no outstanding claims, debts or liabilities relating to, or in connection with, this Document,
- the Provider will refund any unused amounts of the Security Deposit to the Client.

10 General

10.1 Representations

The Client represents and warrants to the Provider:

- (a) it has full legal capacity and power to enter into this Document, to perform its obligations under this Document, to carry out the transactions contemplated by this Document, to own its property and assets and to carry on its business;
- (b) no Insolvency Event has occurred in respect of it;
- (c) this Document constitutes legal, valid and binding obligations, enforceable in accordance with its terms; and
- (d) the execution and performance by it of this Document and each transaction contemplated by it does not conflict with any law, order, judgment, rule or regulation applicable to it or any instrument binding on it.

10.2 Intellectual Property

As between the Parties, all intellectual property developed, adapted, modified or created by or on behalf of the Provider or its Personnel, whether before or after the Effective Date, will at all times vest, or remain vested, in the Provider. This clause 10.2 will survive the termination or expiry of this Document.

10.3 Disputes

A Party may not commence court proceedings relating to any dispute arising from, or in connection with, this Document (**Dispute**) without first meeting with the other Party to seek (in good faith) to resolve the Dispute (unless that Party is seeking urgent interlocutory relief, or the Dispute relates to compliance with this clause).

10.4 Exclusions

Despite anything to the contrary, to the maximum extent permitted by law, the Provider will not be responsible, and will have no Liability, for any works, services, goods, materials or items which do not form part of the Goods or Services, as expressed in the Quotation or have not been provided by the Provider.

10.5 Notices:

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

10.6 Relationship of Parties:

This Document is not intended to create a partnership, joint venture or agency relationship between the Parties.

10.7 Severance:

If a provision of this Document is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Document without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Document.

10.8 Entire agreement:

This Document contains the entire understanding and agreement between the Parties in respect of its subject matter.

10.9 Amendment:

This Document may only be amended by written instrument executed by all Parties.

10.10 Governing law:

This Document is governed by the laws of Victoria.

10.11 Personal Property Securities Register ("PPSR")

The Provider may, in its absolute discretion, register the security interest created under this Document on the PPSR. If, for any reason, the Provider's rights to or ownership of the Goods are prejudiced or will be lost ("**Event**"), then it is expressly agreed that:

- (a) this Document will be deemed to have been terminated by mutual agreement on the Business Day immediately preceding the Event ("**Termination Date**");
- (b) the Goods will be and will be deemed to have been surrendered by the Client to the Provider on the Termination Date;
- (c) if the Client is still in possession of the Goods, from the Termination Date the Client will hold the Goods as a bare bailee only; and

the Client will remain liable under this Document for all matters, including payment of the Price, occurring up to and including the Termination Date, and will be liable as a bare bailee of the Goods from the Termination Date until the Provider is in possession of the Goods.