

## GENERAL TERMS AND CONDITIONS

### All Contracts

#### 1 Credit Approval

Unless the Client has a Commercial Credit Account with a sufficient unutilized limit, all orders are subject to ATCO's credit approval within 15 days from the date of the receipt by ATCO of the Client's acceptance of Quotation.

#### 2 Acceptance of Quotation

Subject to clause 24, the Client may accept a Quotation and will be bound by the resulting Contract upon signing the Quotation or by taking possession of the Equipment upon its delivery, whichever occurs earlier.

#### 3 Indemnities

- (a) The Client must indemnify ATCO against any liability or loss, arising from and any damages, costs, claims, legal fees and expenses arising from or incurred in connection with the use, occupation, operation, maintenance, repair, storage, transportation or keeping of the Equipment; or ATCO owning the Equipment; or ATCO exercising a right under the Contract (including doing anything the Client should have done under the Contract); or the Client not doing what the Client should have done under the Contract.
- (b) This indemnity is a continuing obligation, separate and independent from the Client's other obligations under this Contract. It continues after this Contract ends or is terminated. It is not necessary for ATCO to incur expense or make a payment before ATCO can enforce its right of indemnity.

#### 4 Unforeseen Events

ATCO will not be liable nor be in default under the terms of the Contract for the non performance of any provision of the Contract arising or resulting from any event which is beyond its reasonable control including, but not limited to, acts of God, fires, weather conditions, road conditions, explosions, war, civil disturbances, legislative, administrative or judicial restraints, arrests, insurrections, blockades, strikes or other significant industrial disturbance, sabotage, breakage of or accidents to machinery and any other event (whether similar or not) outside its control and (unless otherwise agreed between the parties) the time for the performance by ATCO of any obligation in the Contract which has been delayed by one or more of these events will be extended for a period equal to the duration of the event or events.

#### 5 Entire Agreement

These terms and conditions and the relevant Quotation comprise the whole of the Contract between ATCO and the Client. Any other terms and conditions referred to in any purchase order form or similar document issued by the Client are of no effect. The Client acknowledges that in entering the Contract it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of the Contract. If any part of these terms and conditions is determined by any authority to be unenforceable or unlawful, these terms and conditions are to be read and enforced as if the unenforceable or unlawful parts had been deleted.

#### 6 Costs and Expenses

The Client indemnifies ATCO for all costs and expenses including solicitor's fees, on a solicitor and own client basis, incurred by ATCO in collecting overdue amounts or enforcing a Contract. These indemnified costs and expenses are payable on demand. This indemnity survives the termination of a relevant Contract.

#### 7 No set off

The Client must not withhold any payment under a Contract or make a deduction from it for any reason, including because:

- (a) the Equipment is damaged, will not operate or is not in the possession of the Client; or
- (b) the Client claims to have a set-off, counter-claim or any other right against ATCO or any other person.

#### 8 Interest

If a payment due by the Client under a Contract is not made when due, ATCO may charge interest on the amount payable at the rate of 5% over the National Australia Bank Limited Benchmark Rate on the day the payment is due (or if no such rate is published on that date then the most recently published rate). Interest will accrue daily until the relevant amount is paid and will be capitalized at the end of each month.

#### 9 Taxes and Charges

- (a) Unless otherwise stated, prices quoted do not include GST or any other taxes and duties.
- (b) Where GST is imposed on a supply made under a Contract by ATCO to the Client, the Client must pay or provide the GST exclusive amount of consideration for the supply and, in addition to and at the same time as the GST exclusive amount of consideration is payable or to be provided for the supply, an additional amount which is equal to the amount of ATCO's GST liability for that supply.
- (c) The Client must pay all stamp and other duties, taxes and charges incurred and which may be payable in connection with this Contract or a payment or receipt under it.

#### 10 PPSA

- (a) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of a Contract, the parties agree that the following provisions of the PPSA will not apply to the enforcement of that security interest: section 95 (notice of accession), to the extent that it requires ATCO to give notice to the Client; section 96 (when a person with an interest in the whole may retain the accession); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires ATCO to give notice to the Client; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- (b) Notices or documents to be given to ATCO for the purposes of the PPSA must be given in accordance with the PPSA. The Client waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (c) the Client consents to ATCO effecting and maintaining a registration on the PPSA register (in any manner ATCO considers appropriate) in relation to any security interest contemplated by this Contract and the Client agrees to provide all assistance reasonably required to facilitate this. The Client agrees to pay all fees and charges associated with ATCO making such registrations.
- (d) The Client must notify ATCO at least 14 days before it changes its name, Australian Company Number or Australian Business Number.

#### 11 Application of Payments

If the Client makes a payment to ATCO at any time, whether in connection with a Contract or otherwise, ATCO may apply that payment to any part of the Amount Owing as it sees fit.

#### 12 Confidentiality

To the extent permitted by section 275 of the PPSA, the parties agree to keep the terms of this Contract and all information of the kind mentioned in section 275(1) of the PPSA confidential and to not disclose the information to any person except where the disclosure is required by law (other than section 275(1) of the PPSA).

#### 13 Intellectual Property

The Client acknowledges that ATCO is solely entitled to all Intellectual Property Rights that may arise or be capable of being claimed as a result of anything done, performed, manufactured supplied or provided by ATCO in the course of, incidental to, or in connection with, any Contract between ATCO and the Client. The parties agree that this clause shall survive the termination of the Contract.

## 14 Applicable Law

Each Contract is governed by the laws of Queensland. The Client and ATCO submit to the non-exclusive jurisdiction of the courts of that place.

## 15 Client Supplied Services

In the event the client is responsible for transport, installation or dismantling the client must ensure works are performed in a professional and safe manner in order to ensure no damage to the building structure or contents. Note in the event the client is supplying the above mentioned services the following applies:

- (a) Issues arising from the installation of the buildings, including roof leaks on modular joints are the responsibility of the Client.
- (b) The Client is responsible for ensuring adequate ventilation is provided between ground level and the modular floor level. All modular joints are to be sealed at the roof and floor joins to prevent condensation. Any condensation issues arising from ineffective seals on the joins or inadequate space beneath the floor level are the responsibility of the Client.
- (c) The Client is to ensure that all unsealed roads are suitable for transport prior to dispatch. Damage to the modules from corrugated road conditions are the responsibility of the Client. If required ATCO will provide a representative to jointly inspect the modules immediately on arrival to site with the Client as second handover point, if ATCO has been engaged to deliver the modules to site.
- (d) The Client is required to ensure buildings are appropriately prepared for transport in order to eliminate damage.
- (e) The client is responsible for ensuring buildings are appropriately tied down.

## Sale Contracts

### The terms and conditions in clauses 16 to 21 apply only to Sale Contracts

## 16 Payment and Delivery

- (a) Unless otherwise stated in the relevant Quotation, terms of payment will be net cash immediately upon receipt of invoice.
- (b) Unless otherwise stated delivery will be no more than 120 days from date of receipt of the order from the Client or the date of the relevant signed Quotation, whichever is earlier.
- (c) Claims covering shortages or damage to the Equipment must be made in writing by the Client at the time of delivery.

## 17 Liability Regarding Drawings and Permits

- (a) Where the Client supplies drawings and other specifications for Equipment to be manufactured by ATCO, ATCO will not be liable for any defects arising from those drawings, designs or specifications. If the drawings designs and/or specifications do not specify materials and/or manufacturing methods then ATCO may, to the extent permitted by law, utilise any materials and/or manufacturing methods it considers appropriate and which ATCO believes satisfies the provisions of any relevant legislation or industry standard or code.
- (b) Unless indicated otherwise in the Scope of Works, ATCO will not be responsible for obtaining or advising the Client about permits, certification, fees or other authorisations or approvals required for the Equipment or its use.

## 18 Special Requirements

ATCO will not be responsible for the Equipment meeting any special requirements of any local government authority, building code, union or labour organisation. All such special requirements will be at the cost of the Client and are outside the Scope of Works.

## 19 Retention of Title

- (a) Ownership of the Equipment remains with ATCO until all Amounts Owing have been paid to ATCO in full and until then the Client only has a right to use the Equipment.
- (b) The Client also grants ATCO a security interest in the Equipment to secure the payment of all Amounts Owing and the performance of the Client's obligations under the Contract.
- (c) If the Client fails to comply with any terms and conditions of a Sale Contract in relation to the payment of any Amount Owing or otherwise or becomes insolvent it will be in default. If the Client defaults, then:
  - (i) immediately on ATCO's request, the Client must return to ATCO any Equipment acquired from ATCO; and
  - (ii) ATCO may enter the premises at which the Equipment is located and seize possession of it; and
  - (iii) ATCO may retain, sell or otherwise dispose of the Equipment.
- (d) These terms and conditions apply even if ATCO gives the Client a Commercial Credit Account.
- (e) The Client must not sell, transfer, hire, lease, dispose of, or part with possession or control of the Equipment to any person (including a Related Corporation) without ATCO's prior written consent until all Amounts Owing have been paid in full. If the Client does any of these things in breach of these terms, the proceeds are to be held by the Client on trust for ATCO irrespective of whether the proceeds are held in a separate account by the Client or otherwise.

## 20 Risk

The Client bears the entire risk of loss arising in connection with the Equipment and its use following delivery to the Delivery Site.

## 21 Supply Only

In the event the contract is a supply only contract (the client is undertaking installation), the following clauses apply:

- (a) Building modules are to be inspected and accepted by the client at the ATCO factory on completion of assembly.
- (b) Issues arising from the installation of the buildings, including roof leaks on modular joints, are the responsibility of the Client.
- (c) The Client is responsible for ensuring adequate ventilation is provided between ground level and the modular floor level. All modular joints are to be sealed at the roof and floor joins to prevent condensation. Any condensation issues arising from ineffective seals on the joins or inadequate space beneath the floor level are the responsibility of the Client.
- (d) The Client is to ensure that all unsealed roads are suitable for transport prior to despatch. Damage to the modules from corrugated road conditions are the responsibility of the Client. If required ATCO will provide a representative to jointly inspect the modules immediately on arrival to site with the Client as second handover point, if ATCO has been engaged to deliver the modules to site.

## Hire Contracts

### The terms and conditions in clauses 22 to 30 apply only to Hire Contracts

#### 22 Term

- (a) The term of a Hire Contract and the rentals payable under it are specified in the relevant Quotation. If the Client retains possession of the Equipment at the end of the Hire Contract term, the hire will continue on a month to month basis on the same terms and conditions as the Hire Contract. Monthly rental is based on 4.333 weeks per month. Rental is payable monthly, even if the Quotation refers to a weekly hire or rental rate.
- (b) If ATCO is responsible to pick-up the Equipment at the end of the Hire Contract term and is unable to do so because it cannot access the Delivery Site due to weather conditions or any other reason beyond ATCO's control, the hire will continue on a month by month basis on the same terms and conditions as the Hire Contract until such time as ATCO is able to access the Delivery Site and pick-up the Equipment.

#### 23 Equipment

For the purposes of a Hire Contract, the Equipment means the equipment specified in the Quotation and includes all movable and removable chattels specified in the relevant Quotation or supplied with the Equipment specified in the relevant Quotation.

#### 24 Prior Commitment of Equipment

In the event that ATCO has committed the Equipment to a third party after the date of the relevant Quotation and prior to receipt by ATCO's Contract Administration Department of the Client's acceptance of that Quotation, then no Hire Contract will have been formed in respect of that Quotation and ATCO will have no further liability to the Client.

#### 25 Payment

The Client must pay to ATCO in advance the monthly rental payments provided in the relevant Quotation. The first rental payment is to be made on the commencement date and each subsequent payment on the first Business Day of each succeeding month during the Hire Contract term, and any extensions of the Hire Contract term. If the Hire Contract term commences or terminates during a month, then the rent payable for the portion of the month will be pro-rated on the basis of a thirty day month.

#### 26 Title

- (a) The Equipment remains the property of ATCO at all times. The Client is only a bailee of the Equipment and only has a right to use the Equipment during the Hire Contract term and any extensions of the Hire Contract term.
- (b) The Client must not sell, transfer, hire, lease, dispose of, or part with possession or control of the Equipment to any person (including a Related Corporation) and must not move the Equipment from the Delivery Site without the prior written consent of ATCO.
- (c) The Client must not make or cause to be made any alterations to the Equipment without ATCO's prior written consent.
- (d) The Equipment must not be attached to any property without ATCO's prior consent. Under no circumstances does the Equipment become a fixture and the Client must obtain an acknowledgment that the Equipment is not a fixture from any third party on whose land the Equipment is placed.
- (e) The Client must ensure that any replacement part or add on becomes ATCO's property and is not subject to a security interest. Replacement parts or add ons form part of the Equipment.

#### 27 Repair

The Client must take proper care of the Equipment and keep the Equipment in good and substantial repair and condition (reasonable wear and tear only excepted) and in a clean, sanitary condition. If the Equipment requires repairing or cleaning the Client must pay to ATCO, the cost of repairs and/or cleaning at rates based on current competitive prices chargeable for the repair and/or cleaning at the location of the Equipment.

#### 28 Insurance

- (a) The Client must insure at all times against loss or damage to the Equipment caused by fire, lightning, explosion, earthquake, aircraft, riot, malicious damage, storm and tempest, flood, theft or accident for the full insurance value as specified by ATCO; and public liability for bodily injury or damage to property arising in connection with the Equipment or its use for no less than \$10,000,000.00 unless notified by ATCO to the Client.
- (b) The insurance policy must:
  - (i) be in a form and substance and with an insurer acceptable to ATCO;
  - (ii) contain a provision where the insurer waives any right of subrogation which the insurer may have with respect to ATCO;
  - (iii) note the interest of ATCO as owner of the Equipment.
- (c) The Client must produce proof of insurance to ATCO or take up the option of the "insurance waiver" through ATCO. If the Client fails to insure and keep insured the Equipment, ATCO may do so at the cost indicated beside the words "insurance waiver" in the relevant Quotation. This cost will be added to the monthly rental payable on the next monthly instalment date for the Equipment. An excess of \$1,000 will apply to each claim made under this arrangement. If ATCO's insurance policy applies because the Client has exercised the insurance waiver:
  - (i) the Client must provide a written report to ATCO and, in the case of theft, to the police within 24 hours of any incident likely to result in a claim against the insurance; and
  - (ii) the Client accepts the terms and conditions of ATCO's insurance policy, including all exclusions
- (d) The Client must not:
  - (i) do anything or fail to do anything which would allow the insurer to refuse or reduce an insurance claim; or
  - (ii) vary the insurances effected for the Equipment without ATCO's prior consent; or
  - (iii) enforce, conduct, settle or compromise any claim without ATCO's prior consent.
- (e) The Client's indemnity under 3(a) is not affected by any insurance arrangements or their effectiveness.

#### 29 Default, Termination and Expiration

- (a) If the Client fails to pay rent or other moneys required to be paid under the terms of the Hire Contract by the due date for payment; or fails to insure the Equipment as required by the Hire Contract; or is Insolvent; or does or causes to be done any act or thing whereby ATCO's rights in the Equipment are prejudiced or jeopardised, ATCO may, without notice, terminate the Hire Contract.
- (b) ATCO may, at any time after the end of the term specified in the relevant Quotation, terminate the Hire Contract by giving 10 days notice in writing to the Client. The Client must then return the Equipment to ATCO at the Client's own risk and expense.
- (c) If ATCO terminates a Hire Contract, ATCO may retake possession of the Equipment and the Client must do everything in their power at their own cost to ensure ATCO can lawfully enter any premises where the Equipment is located and remove the Equipment.
- (d) The Client may terminate a Hire Contract at any time after the term specified in the relevant Quotation has expired by giving 10 days notice in writing to ATCO, and by returning the Equipment to ATCO at the Client's own risk and expense.
- (e) On termination of a Contract the Client must pay to ATCO:
  - (i) all moneys owing to ATCO; and
  - (ii) the full replacement and/or repair cost of any Equipment not returned to ATCO or not satisfying clause 26 of these Terms and Conditions.

**30 When the hired Equipment is a Trailer**

- (a) This clause 30 applies when the Equipment under a Hire Contract is a Trailer.
- (b) The Client undertakes to ensure that:
- (i) only the Client or an Authorised Driver will drive a motor vehicle towing the Trailer; and
  - (ii) the Client (if an individual) and each Authorised Driver holds a current driver's licence (not being a learner's licence or provisional licence) to drive any motor vehicle used to tow the Trailer and has been licensed to drive vehicles of the same category for at least 12 consecutive months prior to first towing the Trailer.
- (c) The Client is responsible for the acts and omissions of each Authorised Driver or any other person the Client allows to drive a motor vehicle towing the Trailer
- (d) The Client and any Authorised Driver must only tow or use the Trailer:
- (i) on a road which is properly formed and constructed as a sealed, metalled or gravel road; or
  - (ii) on maintained, graded, unsealed road provided prior written approval has been given by ATCO.
- The Trailer must not be towed or used off road (e.g. on a fire trail, beach, track, grassed area or across streams or any other body of water) unless the Client has prior written authorisation from ATCO.
- (e) The Client and any Authorised Driver must notify ATCO of the exact location of the Trailer at all times upon request by ATCO.
- (f) The Client and any Authorised Driver must:
- (i) not use, or allow the Trailer to be used, for any illegal purpose, race, contest or performance test of any kind;
  - (ii) not, without ATCO's prior written consent, use, or allow the Trailer to be used, to push anything;
  - (iii) not carry any passengers while the Trailer is in transit;
  - (iv) not be under the influence of alcohol, drugs or have a blood alcohol content that exceeds the legal limit in the State or Territory in which the Trailer is towed or used;
  - (v) not tow or use the Trailer when it is damaged or unsafe;
  - (vi) not tow or use the Trailer after an accident or hitting an object (including an animal) until the Client has obtained ATCO's written approval to do so;
  - (vii) not use the Trailer to transport goods;
  - (viii) not, without ATCO's prior written consent, use the Trailer to carry any flammable substance which has a flash point under 22.8°C or any other explosive or corrosive substances;
  - (ix) not use the Trailer in contravention of any law;
  - (x) ensure an appropriate motor vehicle is used to safely and legally tow the Trailer, including but not limited to tow weight capacity, down weight on the tow ball, engine capacity, wide mirrors and braking system;
  - (xi) tow, use and operate the Trailer in strict accordance with the Operations Manual;
  - (xii) pump out any water, waste and diesel in the Trailer prior to towing, relocation or transportation.
- (g) The Client and each Authorised Driver must:
- (i) maintain and operate the Trailer in accordance with the Operations Manual;
  - (ii) fill the generators with only the fuel type specified in the Operations Manual;
  - (iii) keep the Trailer secure at all times.
- (h) The Client must pay for any unauthorised repairs to the Trailer and for all parking, speeding and traffic infringements and tolls in respect of the Trailer during the term of the Hire Contract.
- (i) The supply of all potable water required for the Trailer and any costs associated with cleaning of lines or water tanks [due to the poor quality of water used by the Client] will be the responsibility of the Client.

**Other Provisions****31 Transportation****This clause 31 applies if ATCO is providing transportation services**

- (a) If delivery of any Equipment is delayed by the Client, or by causes within the Client's control, payments will become due as if delivery had been made on the original date specified by the Client.
- (b) Transportation costs will be invoiced on individual or aggregate deliveries/pick-ups at ATCO's sole discretion.
- (c) Prior to the date of delivery/pick-up the Client will give ATCO the details of the access route to the Delivery Site. The Client assumes complete responsibility for the suitability for transporting the Equipment on all access roads. If any access roads are not suitable for transporting the Equipment using vehicles normally used by ATCO in transporting the Equipment then ATCO may notify the Client in writing of this and if the defect described by ATCO is not remedied by the Client within 2 Business Days from receipt of such notice then ATCO will be relieved of its obligation to transport the Equipment under the Contract and delivery will be deemed to have been effected at the Delivery Site and ATCO will be entitled to payment of the amounts payable under the Contract and waiting or standby time charges arising as a result of the delay. In addition to those amounts, ATCO will be entitled to receive a charge for any time spent on any access road before reaching the Delivery Site where its trucks are unable to maintain an average speed of 40 km/hour.
- (d) If offloading or loading is the responsibility of the Client, the Client will unload or load the Equipment immediately upon the arrival of the transportation vehicles at the Delivery Site unless the Client has obtained the consent of ATCO to defer unloading or loading for a specified period. The Client must in addition to all other sums required to be paid under the Contract pay to ATCO an amount stipulated by ATCO for use of the transportation vehicles during the period of deferred unloading or loading.
- (e) If ATCO is responsible for offloading then ATCO will be entitled to offload and remove its transportation vehicles from the Delivery Site immediately and be under no obligation to defer unloading for any reason.
- (f) If ATCO agrees to defer unloading or loading then the Client must pay to ATCO in addition to all the payments required to be paid under the Contract a sum equal to ATCO's current hourly rate for the area of delivery/pick-up for each hour of waiting or standby time. This charge will also apply if a delay occurs in unloading at the Delivery Site because of circumstances beyond ATCO's control or a delay occurs by reason of being unable to obtain access to the Delivery Site.
- (g) Unloading or loading at ATCO facilities will be in accordance with ATCO standard operating hours.

## 32 Installation or Dismantling

### This clause 32 applies if ATCO is providing installation or dismantling services

- (a) Unless otherwise stated in a Quotation installation or dismantling costs are predicated on the installation or dismantling being a continuous one-time operation.
  - (b) ATCO will invoice the Client and be entitled to payment for installation or dismantling services performed under a Contract on the date of completion of the installation or dismantling work. The Client's execution of a Certificate of Completion or the Client's occupation of all or part of the Equipment will be sufficient evidence of completion of the installation work in accordance with the Contract, including the Scope of Works.
  - (c) Invoicing for installation or dismantling may, at ATCO's discretion, be on a per Unit or Complex basis, where:
    - (i) "Complex" means two or more Units joined together; and
    - (ii) "Unit" means an ATCO type transportable structure or building.
  - (d) (i) The Client must provide an area within the Delivery Site upon which the Equipment is to be placed ("Complex Area") for the installation of the Equipment, having the following attributes:
    - (A) a minimum soil bearing pressure of 125 kpa. Otherwise ATCO will be under no obligation to provide maintenance and any warranty given by ATCO for the Equipment and or installation will be of no effect;
    - (B) a maximum slope and tolerance of not more than 2% cross fall
  - (ii) The Client must provide an area within the Delivery Site and adjacent to the Complex Area used for the purpose of installing or dismantling the Equipment to facilitate the positioning or removal of the Equipment on the Complex Area. At all sides of the Complex Area there must be a working area 18 metres in width from the Complex. The maximum slope tolerance for the working area must not exceed 15cm in 3.5 metres.
  - (iii) The Client will be responsible to ensure that the Complex Area, the working area, all storage areas and access roads are adequately drained and that the surface conditions will permit ATCO to carry out its normal operations for the installation or dismantling of the Equipment.
  - (iv) The Client must notify ATCO in writing at least 30 days prior to the date that installation or dismantling is to commence.
  - (v) If the Client fails to satisfy these conditions then ATCO may at its election be relieved of its installation or dismantling obligations under the Contract, but if ATCO elects to proceed with the installation or dismantling, then any additional cost incurred must be paid by the Client in accordance with the paragraph (g) of this clause 32.
- (e) During installation or dismantling ATCO may, to the extent permitted by law, utilise such materials and methods it considers appropriate having regard to the Scope of Works;
  - (f) The Client will be liable to ATCO for costs and expenses resulting from any delays caused by the Client or any other third party under the control of the Client that cause ATCO to place its labour force on standby.
  - (g) Any work which is not included in the Scope of Work ("Extra Work") and any substitution for addition to, or deletion of any work which is included in the Scope of Work ("Changes") must be agreed by the Client and ATCO in writing before such Extra Work is undertaken and Changes are made.

## 33 Warranties and Limitations

- (a) This clause 33(a) contains the disclosure required to be made to "consumers" (as defined in the Australian Consumer Law) under section 102 of the Australian Consumer Law:

**Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are 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.**
- (b) The statement in clause 33(a) only applies to the Client if the Client is acquiring the Equipment as a "Consumer" for the purposes of section 102 of the Australian Consumer Law. Further where the Client is so acquiring the Equipment as a "Consumer" the application of the guarantees referred to in that statement is limited as set out in clauses 33(d) and (e).
- (c) Subject to clauses 33(d) and (e) these terms and conditions do not, and no provision of these terms and conditions purports to, exclude, restrict or modify or have the effect of excluding, restricting or modifying:
  - (i) the application in relation to the supply of the goods or services of any provision of the Australian Consumer Law or of any similar State or Federal legislation that may not be excluded, restricted or modified;
  - (ii) the exercise of a right conferred by such provision;
  - (iii) any liability of ATCO for breach of a guarantee under such a provision;
  - (iv) any liability ATCO may have under section 274 of the Australian Consumer Law (but nothing in these conditions is taken to be a provision increasing liability as contemplated in section 276A(4) of the Australian Consumer Law).
- (d) Pursuant to section 64A of the Australian Consumer Law this clause 33(d) and clause 33(e) apply in respect of the goods or services supplied under a Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, but this clause 33(d) and clause 33(e) will not apply if a party establishes that reliance on them would not be fair and reasonable. This clause 33(d) and clause 33(e) prevail over any inconsistent provisions in these terms and conditions.
- (e) The liability of ATCO for failure to comply with a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to:
  - (i) in the case of goods, to any one of the following as determined by ATCO:
    - (A) the replacement of the goods or the supply of equivalent goods;
    - (B) the repair of the goods;
    - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - (D) the payment of the cost of having the goods repaired;
  - (ii) in the case of services, to any one of the following as determined by ATCO:
    - (A) the supplying of the services again;
    - (B) the payment of the cost of having the services supplied again.
- (f) Subject to clauses 33(a) to (e), the Seller excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, expressed or implied (and whether implied by law (including Act of Parliament or otherwise), relating to a Contract, the Equipment and any services supplied by ATCO (whether as to their merchantability, description, design, use, quality, suitability, fitness for any purpose, correspondence with any description or sample or otherwise), or their delivery, being provisions that might otherwise form part of these terms and conditions, or any Contract, or be collateral to or form part of any agreement that is collateral to these conditions, or any Contract.
- (g) Subject to clauses 33(c) to (e), ATCO will not be liable to compensate or indemnify the Client (or any other person) for any loss, damage, cost or expense suffered or incurred (of any nature whatsoever and howsoever caused) by the Client (or any other person) in relation to a Contract, the Equipment (or any defect or deficiency in or failure of the Equipment), or their delivery, mis-delivery, or non-delivery, or any services supplied by ATCO or ATCO's agents (including without limitation any defect or deficiency in or failure of the services) and whether the loss or damage results from negligence, any other tort, breach of contract, breach of statute, breach of an equitable duty or on any other basis whatsoever (and whether the loss or damage is direct, indirect, special, consequential, involves loss of profit, loss of revenue, loss of use, loss of opportunity, liability to third parties or is of any other nature whatsoever).
- (h) By accepting delivery of the Equipment under a Contract, the Client acknowledges that it has examined the Equipment thoroughly and the Equipment is free of any defect.
- (i) No rule of construction applies to the disadvantage of ATCO because it was responsible for the preparation of, or seeks to rely on, the Contract or any part of it.

## 34 Definitions

In this document:

**Amounts Owning** means all amounts that at any time are payable, owing but not currently payable, contingently owing or remaining unpaid by the Client to ATCO under any Contract and under any other agreement or arrangement between the Client and ATCO.

**Authorised Driver** means a person authorised by the Client to operate a motor vehicle towing a Trailer.

**ATCO** means ATCO Structures & Logistics Pty Ltd ABN 71 083 902 309 and any Related Corporations jointly and each of them severally.

**Business Day** means Monday to Friday (inclusive) excluding public holidays at the Delivery Site.

**Certificate of Completion** means a certificate by the Client confirming the Scope of Works has been completed to the Client's satisfaction in accordance with the Contract.

**Client** means the client named in a Quotation.

**Commercial Credit Account** means an approved account for the Client on terms of payment within 30 days or such other period approved by ATCO in writing.

**Commercial Credit Account Application** means this application for commercial credit made by the Client to ATCO.

**Contract** means a contract comprising a Quotation accepted by the Client and these terms and conditions.

**Controller** has the meaning it has in the Corporations Act.

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

**Costs** include charges and expenses including in connection with advisers.

**Delivery Site** means the delivery address specified in the Quotation as the location agreed by the Client and the ATCO for the delivery (and, if relevant, pick-up) of the Equipment.

**Equipment** means the original equipment, modular or transportable buildings, Trailer, goods, products or materials (as described in any Quotation) and also includes all proceeds. The Equipment may be 'other goods' and/or 'motor vehicles' as classified under the PPSA.

**GST** means the tax payable on taxable supplies within the meaning of the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Hire Contract** means a Contract for the hire of Equipment by ATCO to the Client.

**Insolvent** means for the Client (as applicable) being an insolvent under administration or insolvent or having a Controller appointed (each as defined in the Corporations Act), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from any creditors under any statute or dissolved (other than to carry out a reconstruction while solvent), if an individual, a bankruptcy notice is filed in respect of the Client or otherwise admits in writing or is declared by a court that it is unable to pay its debts as and when they fall due.

**Intellectual Property Rights** means rights subsisting or capable of subsisting or being obtained under intellectual property legislation, including legislation dealing with copyright, circuit layouts, designs, patents, plant varieties or trade marks, and whether in Australia or overseas and any form of intellectual property rights arising in equity or at common law including trade secrets, know-how and proprietary or confidential information (including rights to apply for or obtain any of them).

**Operations Manual** means the operations manual for a Trailer supplied with the Trailer by ATCO.

**PPSA** means the Personal Property Services Act 2009 (Cth) and any regulations under it.

**Quotation** means a sales quotation, hire quotation, proposal or similar document issued by ATCO, including any scope of works form attached to it.

**Related Corporation** has the meaning given to the term "related body corporate" in section 50 of the Corporations Act.

**Sale Contract** means a Contract for the sale of Equipment by ATCO to the Client. **Scope of Works** means the scope of works for a Contract as specified in the relevant Quotation.

**Taxes** means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income of the ATCO.

**Trailer** means a trailer mounted modular building.

## 35 Interpretation

In this document:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not alter the interpretation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
- (e) terms defined in the PPSA have the same meaning when used in this document unless otherwise indicated;
- (f) a reference to:
  - (i) this document includes any variation, novation or replacement of it;
  - (ii) the Client includes a reference to its authorised representatives, employees, agents and subcontractors and the Client's executors, administrators, successors, substitutes, (including, without limitation, persons taking by novation) and assigns;
  - (iii) ATCO includes a reference to that person's executors, administrators, successors, substitutes, (including, without limitation, persons taking by novation) and assigns; and
  - (iv) law means common law, principles of equity, and laws made by parliament, and a reference to laws made by parliament or any legislation includes regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).