



1. Definitions

- 1.1 "SRPL" means Saferoads Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Saferoads Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by SRPL to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by SRPL to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by SRPL to the Customer.
- 1.5 "Price" means the Price payable for the Goods/Equipment hire as agreed between SRPL and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with SRPL's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and SRPL.
- 2.3 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, SRPL reserves the right to vary the Price with alternative Goods as per clause 4.2. SRPL also reserves the right to halt all Services until such time as SRPL and the Customer agree to such changes.
- 2.4 Where SRPL gives advice, recommendations, information, assistance or service to the Customer or the Customer's agent, regarding the Goods or Services then it is given in good faith and SRPL shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.

3. Change in Control

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

4. Price and Payment

- 4.1 At SRPL's sole discretion the Price shall be either:
 - a) as indicated on any invoice provided by SRPL to the Customer; or
 - b) the Price as at the date of delivery of the Goods/Equipment according to SRPL's current price list; or
 - c) SRPL's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5. Delivery of Goods / Equipment

- 5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
 - a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at SRPL's address; or
 - b) SRPL (or SRPL's nominated carrier) delivers the Goods / Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At SRPL's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods / Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then SRPL shall be entitled to charge a reasonable fee for redelivery of the Goods / Equipment and / or the storage of the Goods.
- 5.4 SRPL may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.



5.5 Any time or date given by SRPL to the Customer is an estimate only. The Customer must still accept delivery of the Goods / Equipment even if late and SRPL will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SRPL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SRPL is sufficient evidence of SRPL's rights to receive the insurance proceeds without the need for any person dealing with SRPL to make further enquiries.

6.3 If the Customer requests SRPL to leave Goods outside SRPL's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

6.4 Where SRPL is required to install the Materials the Customer warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and SRPL shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

7. Accuracy of Customers Plans

7.1 SRPL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, SRPL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8. Access

8.1 The Customer shall ensure that SRPL has clear and free access to the work site at all times to enable them to undertake the works. SRPL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SRPL.

9. Underground Locations

9.1 Prior to SRPL commencing any work the Customer must advise SRPL of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

9.2 Whilst SRPL will take all care to avoid damage to any underground services the Customer agrees to indemnify SRPL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.

10. Title To Goods

10.1 SRPL and the Customer agree that ownership of the Goods shall not pass until:

- a) the Customer has paid SRPL all amounts owing to SRPL; and
- b) the Customer has met all of its other obligations to SRPL.

10.2 Receipt by SRPL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

10.3 It is further agreed that:

- a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and must return the Goods to SRPL on request.
- b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SRPL and must pay to SRPL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.



- c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for SRPL and must pay or deliver the proceeds to SRPL on demand.
- d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of SRPL and must sell, dispose of or return the resulting product to SRPL as it so directs.
- e) the Customer irrevocably authorises SRPL to enter any premises where SRPL believes the Goods are kept and recover possession of the Goods.
- f) SRPL may recover possession of any Goods in transit whether or not delivery has occurred.
- g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SRPL.
- h) SRPL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods / Equipment that has previously been supplied and that will be supplied in the future by SRPL to the Customer.
- 11.3 The Customer undertakes to:
 - a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SRPL may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 1 1.3(a)(i) or 11.3(a)(ii);
 - b) indemnify, and upon demand reimburse, SRPL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods / Equipment charged thereby;
 - c) not register a financing change statement in respect of a security interest without the prior written consent of SRPL;
 - d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods / Equipment in favour of a third party without the prior written consent of SRPL;
 - e) immediately advise SRPL of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 SRPL and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121 (4), 130t 132(3)(d) and 132(4) of the PPSA,
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by SRPL, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by SRPL under clauses 11.3 to 1 1.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of SRPL agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).



12.2 The Customer indemnifies SRPL from and against all SRPL's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising SRPL's rights under this clause.

12.3 The Customer irrevocably appoints SRPL and each director of SRPL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

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

13.1 The Customer must inspect the Goods / Equipment on delivery and must within seven (7) days of delivery notify SRPL in writing of any evident defect damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow SRPL to inspect the Goods / Equipment.

13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

13.3 SRPL acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the NonExcluded Guarantees, SRPL makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods / Equipment. SRPL's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Customer is a consumer within the meaning of the CCA, SRPL's liability is limited to the extent permitted by section 64A of Schedule 2.

13.6 If SRPL is required to replace the Goods under this clause or the CCA, but is unable to do so, SRPL may refund any money the Customer has paid for the Goods.

13.7 If the Customer is not a consumer within the meaning of the CCA, SRPL's liability for any defect or damage in the Goods is:

- a) limited to the value of any express warranty or warranty card provided to the Customer by SRPL at SRPL's sole discretion;
- b) limited to any warranty to which SRPL is entitled, if SRPL did not manufacture the Goods; (c) otherwise negated absolutely.

13.8 Subject to this clause 13, returns will only be accepted provided that:

- a) the Customer has complied with the provisions of clause 13.1; and
- b) SRPL has agreed that the Goods are defective; and
- c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- d) the Goods are returned in as close a condition to that in which they were delivered as is possible,

13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, SRPL shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- a) the Customer failing to properly maintain or store any Goods/Equipment;
- b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
- c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- d) the Customer failing to follow any instructions or guidelines provided by SRPL;
- e) fair wear and tear, any accident, or act of God.

13.10 SRPL may in its absolute discretion accept non-defective Goods for return in which case SRPL may require the Customer to pay handling and / or re-stocking fees of up to:

- a) ten percent (10%) of the value of the returned Goods when returned in their original unmodified condition plus any freight costs; or
- b) fifty percent (50%) of the value of the returned Goods when returned in a modified or manufactured condition plus any freight costs.

13.11 Notwithstanding anything contained in this clause if SRPL is required by a law to accept a return then SRPL will only accept a return on the conditions imposed by that law

14. Intellectual Property

14.1 Where SRPL has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of SRPL.



14.2 The Customer warrants that all designs, specifications or instructions given to SRPL will not cause SRPL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SRPL against any action taken by a third party against SRPL in respect of any such infringement.

14.3 The Customer agrees that SRPL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SRPL has created for the Customer.

15. Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SRPL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 If the Customer owes SRPL any money the Customer shall indemnify SRPL from and against all costs and disbursements incurred by SRPL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, SRPL's collection agency costs, and bank dishonour fees).

15.3 Without prejudice to any other remedies SRPL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SRPL may suspend or terminate the supply of Goods / Equipment to the Customer. SRPL will not be liable to the Customer for any loss or damage the Customer suffers because SRPL has exercised its rights under this clause.

15.4 Without prejudice to SRPL's other remedies at law SRPL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SRPL shall, whether or not due for payment, become immediately payable if:

15.5 any money payable to SRPL becomes overdue, or in SRPL's opinion the Customer will be unable to make a payment when it falls due;

15.6 the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

15.7 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Compliance with Laws

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

16.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.

16.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

17. Dispute Resolution

17.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

18. Cancellation

18.1 SRPL may cancel any contract to which these terms and conditions apply or cancel delivery of Goods / Equipment at any time before the Goods / Equipment are due to be delivered by giving written notice to the Customer. On giving such notice SRPL shall repay to the Customer any money paid by the Customer for the Goods / Equipment. SRPL shall not be liable for any loss or damage whatsoever arising from such cancellation.



- 18.2 In the event that the Customer cancels delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SRPL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Act 1988

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

20. Equipment Hire

- 20.1 Equipment shall at all times remain the property of SRPL and is returnable on demand by SRPL. In the event that Equipment is not returned to SRPL in the condition in which it was delivered SRPL retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all SRPL shall have right to charge the Customer the full cost of replacing the Equipment.



- 20.2 The Customer shall;
- a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by SRPL to the Customer.
- 20.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, SRPL's interest in the Equipment and agrees to indemnify SRPL against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

21. General

- 21.1 The failure by SRPL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SRPL's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 these terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which SRPL has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 21.3 Subject to clause 13 SRPL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by SRPL of these terms and conditions (alternatively SRPL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods / Equipment hire).
- 21.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SRPL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 SRPL may license or sub-contract all or any part of its rights and obligations without the Customer's consent,
- 21.6 The Customer agrees that SRPL may amend these terms and conditions at any time. If SRPL makes a change to these terms and conditions, then that change will take effect from the date on which SRPL notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for SRPL to provide Goods / Equipment to the Customer.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.