

Annexure – Standard Trading Terms and Conditions of Craven Hire

1. Interpretation and Definitions

- a. Singular includes plural and vice versa;
- b. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- c. A reference to a party includes its personal representatives, successors or permitted assigns;
- d. A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- e. A reference to in writing or written includes faxes and e-mails;
- f. Include or including are not limited by the class of things that follow those words; and
- g. The contra proferentem rule of construction does not apply – the contract will not be interpreted against the party that drafted it.
- h. Payment is expected in the currency expressly agreed upon in the quote and failing any specification therein then the amounts in the quotation, and payment amount, is in AUD dollars unless otherwise specified in writing by Craven Hire.
- i. Words or clauses which would be void or voidable, will not make the balance of the clause or document void, but rather will be read down to the extent possible, and failing that will be struck through to the extent to allow the rest of the document to be enforceable.
- j. Unless otherwise specified, time or days is by reference to the time in Brisbane.
- k. The jurisdiction which governs the agreement between the parties is Queensland, Australia, and the parties submit to the non-exclusive jurisdiction of the courts in that State.
- l. In these terms and conditions, the following definitions apply:
 - i. **All Monies** means all monies of whatsoever kind now or in the future due or owing to Craven Hire by You and includes monies payable on any account, quote, invoice, contract or agreement and includes interest, charges, fees and costs;
 - ii. **Craven Hire** means Craven Hire Pty Ltd A.C.N. 637 880 927, including its successors and assigns, who provides the quote, Works, and Services to You;
 - iii. **Force Majure Event** means an event beyond the reasonable control of Craven Hire including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Craven Hire or any other

party), failure of a utility service or transport network, acts of war, danger of war, acts of terrorism, civil war, decrees or restraints by government authorities, entry and exit restrictions, restraints of princes, rulers or people, acts of civil or military authority, malicious damage, governmental orders, quarantine, stoppage or restraint of labour, riots, slowdowns, boycotts, sabotage, labour unrest (except if limited to the Party affected), breakdown of plant or machinery, overburdening of any port, default of suppliers or subcontractors, fire, explosion, cyclone, flood, drought, or any acts of God, casualty or accident, disease, epidemic, pandemic or any irresistible act of nature;

- iv. **Hire Goods** means the plant, machinery, vehicles, equipment, items or other goods on hire to You from time to time;
- v. **Hire Period** means the minimum period of hire specified in our quotation, schedule or hire contract with You;
- vi. **Hire Rate** means the hourly, daily, weekly or monthly hire rate as specified by Craven Hire in writing in the quotation or published rates for the Hire Goods but where it is absent or uncertain it means Craven Hire's standard rate of hire on a monthly basis as published by Craven Hire from time to time;
- vii. **PPSA** means the *Personal Property Securities Act 2009* (Cth) and regulations;
- viii. **Services** means any service Craven Hire may provide to You from time to time including the hire of Hire Goods (where applicable);
- ix. **Works** means all Services, Goods and/or other works Craven Hire expressly agree to sell, deliver, supply to and/or perform for You from time to time; and
- i. **You** means the person or firm who purchases Services from Craven Hire.

2. Quotation Acceptance

- a. Should You wish to accept this offer, work and equipment ordering will only proceed upon receipt of an official order or acceptance of Craven Hire quotation.
- b. These are the standard terms and conditions which shall apply to all contracts entered into between Craven Hire and You for the supply of goods or Services.
- c. Your attention is drawn to clauses in these conditions which may limit Craven Hire liability, may require You to indemnify Craven Hire in certain circumstances and which may limit time, including but not limited to, clause 13.
- d. Craven Hire's quotation excludes all events or circumstances that could not be reasonably known to Craven Hire at the time of quotation. You acknowledge Craven Hire have had no opportunity to inspect and are reliant on Your full honest and accurate prior disclosure of all relevant facts and circumstances prior to Craven Hire

giving a quotation.

- e. Craven Hire may not be able to carry out the Services at all, or only to a limited extent, and You agree to pay all additional rates, fees and charges arising from any of the circumstances herein arising.

3. Price Validity

- a. This offer is open for acceptance for a period of 30 days from the date of submission (unless stated otherwise) and thereafter Craven Hire respectfully reserve the right to revise this quoted price or withdraw completely without penalty.

4. Payment/Pricing

- a. Standard payment terms are seven (7) days from the date of the invoice, unless a prior arrangement is made and agreed upon between the parties in writing.
- b. You agree to pay Craven Hire All Monies by the due date including Craven Hire invoices and accounts by the due date without deduction, counterclaim or setoff.
- c. Where Craven Hire reasonably determine it is appropriate to do so, Craven Hire may instead require payment in advance of commencing work or implement deposit or other security terms.
- d. Should a payment not be made in accordance with clause 4 (a), Craven Hire may suspend all work until all arrears are paid in full.
- e. The deposit must be paid within three (3) business days of accepting the quote. The quote is to be accepted in writing, with confirmation of the deposit paid provided to Craven Hire. If the deposit is not paid within three (3) business days of accepting the quote, then the quote is no longer valid, and the contract is terminated.
- f. Late payment will incur interest at 11% per annum compounding and capitalising on the last day of each month from the due date until payment is received in full.
- g. Payment is expected in the currency agreed upon in the quote and failing any specification therein then the amounts in the quotation, and payment amount, is in AUD dollars unless otherwise specified in writing by Craven Hire.
- h. The deposit is held as security, will be applied by Craven Hire to the amount owed by You pursuant to the contract.
- i. The price, rate, or charge of any and all Works shall be subject to the addition of GST and a sum equal to any other government duty, tax or levy applicable to the Goods and/or Services comprising the Works.

5. Additional Charges (if applicable)

- a. Unless expressly stated otherwise on a quotation, all prices, rates, Hire Rate, and charges are exclusive of third party certifying, delivery/freight, design, planning charges, third party costs, taxes, duties, government approvals or permits and any other fees, costs, or expenses (e.g. travel and accommodation).
- b. Any time or price, rate, Hire Rate, or charge specified in our quotation is an estimate

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only. Craven Hire may pass on, and You agree to pay Craven Hire for all variations or additional work arising, for increased time performing the Works, delay costs, any increase in price, labour cost, expense or cost incurred by or arising to Craven Hire including from:

- i. Taxes, duties, awards, rates of exchange and other supply fluctuations and changes in conditions taking place prior to delivery or completion of the Works;
- ii. Any act, omission, error or delay by You or any other person connected with You including any change to designs or plans;
- iii. Any variation to the Works arising at Your request or approval, or by necessity or due to some other circumstance not reasonably known to Craven Hire at the time of providing the quotation; or
- iv. Any other material fact, omission, condition, requirement or specification which was not disclosed by You in writing to Craven Hire prior to the date of Craven Hire quotation.

6. Delivery

- a. All goods are at Your risk from the time of leaving Craven Hire premises, even if Craven Hire have agreed to deliver the goods to You at another location. You must insure the goods from the time they leave Craven Hire premises. You indemnify Craven Hire against any claim, loss or liability or damage or injury arising to or caused by the goods after despatch from our premises.
- b. You must inspect the Works immediately upon delivery/performance and let us know within 48 hours of completing delivery if there is any defect, fault, short delivery or failure in description failing which You are deemed satisfied with the condition of the Works and the performance of the Works.
- c. You must permit Craven Hire access to the site at all reasonable times to inspect the Works to determine the validity of any complaint, claim or demand received by Craven Hire from You.
- d. If, due to Force Majeure or other reasons beyond Craven Hire control, Craven Hire are prevented from or delayed in making delivery or performance of the Works (or any part of them), Craven Hire may either extend the time for delivery or performance for a reasonable period or terminate the contract. You agree that You do not have any claim for damages and must pay for all Works delivered and/or performed prior to the date of such termination.
- e. Any time stated in a quotation or Your documentation for delivery or performance of the Works does not make time of the essence and is only an approximation.

7. Risk

- a. Where Craven Hire supply goods only, all risk for the goods shall immediately pass to You:
 - i. Where You collect the Goods – when You or Your nominated carrier takes possession of the goods at Craven Hire address; or
 - ii. Where Craven Hire have agreed to deliver the Goods – from the time of departure from Craven Hire premises.

8. Your Obligations

- a. You agree to:
 - i. Ensure that all documents, plans, and information You provide to Craven Hire is complete and accurate; and
 - ii. Co-operate with Craven Hire in all matters relating to the Works.
- b. If Craven Hire performance of any of its obligations are prevented or delayed or impacted by any act, omission, error, or breach by You or failure by You to perform any relevant obligation, in addition to any other rights Craven Hire may have, Craven Hire may:
 - i. Suspend performance, and You cannot claim against Craven Hire for doing so or for the delay arising; or
 - ii. Vary its Works, and charge to You, which you agree to pay, such additional rates, charges, expenses or costs as Craven Hire reasonably believes are necessary to ensure that Craven Hire does not suffer any cost, expense, loss or damage, and continues to make a reasonable profit from the Works.
- c. You indemnify Craven Hire against all expenses, costs, damages, and loss arising except to the extent Craven Hire contributed to it by its own breach or negligence.

9. Hire Terms

- a. Where Craven Hire agree to hire Hire Goods to You, the following specific terms also apply to the hire of Hire Goods and will prevail to the extent of any inconsistency with our other general trading terms.

Period of Hire

- b. Despite anything to the contrary, You agree to hire the Hire Goods for the greater of:
 - i. The Hire Period; or
 - ii. One month (being from the commencement date to the following monthly anniversary of that date).
- c. Hiring shall commence from the time (as applicable):
 - i. In the case of collection by You – from the earlier of the agreed date of collection or the actual day of collection by You from Craven Hire premises; or

- ii. In the event you require the Hire Goods to be delivered by Craven Hire to Your premises – from the actual date of delivery by Craven Hire, except where Craven Hire have not been able to make delivery earlier due to Your acts, omissions, or requested delay in delivery, then it is the date Craven Hire specified as the commencement date provided on Your original order.
- d. You agree that the Hire Period specified in any agreement or quotation accepted by You, is the minimum Hire Period and in the event of a breach of the Hire Period, or early return for any reason by You, Craven Hire are entitled to recover all loss and damage including loss of profits for the remainder of the unused Hire Period.

During the Hire Period

- e. When the Hire Goods are on hire to You, You are responsible for all maintenance and repair obligations in relation to the Hire Goods, including arising from fair wear and tear. Craven is only responsible for repairs arising from manufacturer defects to the extent permitted by law.
- f. You are not permitted to make any modification to the Hire Goods without Craven Hire prior written consent.
- g. Prior to the commencement of the Hire, pay the agreed deposit and pay the Hire Rate in advance.
- h. Hire Rates are payable in advance at the frequency of the Hire Term (e.g. if monthly hire, monthly) unless otherwise agreed to in writing. The Hire Rate is Craven Hire's rate to hire the Hire Goods, and excludes all other expenses, outgoings, and costs incurred because of the transport, use of, or decommissioning of the Hire Goods by you, and you agree to pay all other expenses, outgoings, and charges to Craven Hire in addition to the Hire Rate. You are not entitled to abate, reduce, or deduct from the Hire Rate, and you must pay it by the due date without set off, deduction or abatement whatsoever.
- i. All Hire Goods are on a dry hire basis. You are solely responsible for ensuring that they are used by appropriately licensed, experienced and trained operators.
- j. You agree to:
 - i. Maintain at your sole cost the regular servicing program for the Hire Goods which will be in accordance with the manufacturer's recommendations, and where the manufacturer has none, then in such frequency, and to the standard, that Craven Hire determine is most appropriate for the Hire Goods to be maintained and be returned in good repair and condition, and with a service history;
 - ii. Use the Hire Goods in a skilful and proper manner and only for the purpose and within the capacity for which it was designed;
 - iii. Ensure that the Hire Goods remain at the location agreed to with Craven Hire in writing and is kept safe during the Hire Period;

- iv. Not use the Hire Goods in any manner which would result in the insurer denying a claim;
- v. Perform daily checks, including of oil, fuel, tyres and other components that should be checked on a daily basis to prevent damage or to minimise safety risks, and to pay for all necessary oils, fuel, tyres etc required to keep the Hire Goods in good operating condition;
- vi. Maintain records of use, service history, daily checks, and other operating and safety standards, and produce those records to Craven Hire upon request;
- vii. Comply with applicable Work Health and Safety Laws and Regulations, and generally all statutes, regulations and laws applicable to the use of the Hire Goods;
- viii. Notify Craven Hire immediately of any loss or damage to the Hire Goods;
- ix. To seek Craven Hire's prior approval to the use of repairers or parts, and to ensure that only new parts are used unless otherwise approved by Craven Hire;
- x. Allow Craven Hire, or their nominated representative, access to Hire Goods and to inspect the state of repair and operation of the Hire Goods, at all reasonable times.
- xi. To provide the following items on site free of charge to Craven Hire: - workshop facilities, water, air, craneage, tooling for repairs, transport to and from the Hire Goods, safety equipment required to enter site, consumables, changeroom/bathroom, accommodation, and no charge for any storage of parts etc that Craven Hire may agree in writing to supply;
- xii. Pay Craven Hire's costs of visiting the site, or inspecting the Hire Goods, at your request, or to undertake any training of Your employees etc. You agree that Craven Hire can charge an hourly rate for undertaking training;
- xiii. Craven Hire is not obliged to supply parts, but where it agrees to do so in writing, You must pay for all parts on the terms outlined in that agreement, and by the due date, in addition to the Hire Rate.
- k. Where you insist on Craven Hire or any of its employees undertaking site training or inductions before accessing the Hire Goods, you must provide it free of charge, at reasonable hours of the day, and in locations approved of by Craven Hire.
- l. You agree that all replacement parts paid for by You become Craven Hire property and must be installed free of all liens, third party rights, or security interests. Replacement parts must be new, have a value and utility at least equal to the parts replaced.
- m. You must not permit or create any third party dealing, lien, security interest, encumbrance, hire, pledge, lease etc to arise in respect of the Hire Goods. At the

end of the Hire Period for whatsoever reason, You must return the Hire Goods in clean and good repair and condition, with up to date servicing, including a major service undertaken in the month prior to the return of the Hire Goods to Craven Hire, and in good operating order, without damage and all wear parts replaced with new parts which are materially the same, fit for purpose and of similar quality. You agree that the Hire Goods must be returned in at least the same condition they were in as at the date of the Equipment first being put into your possession for use on hire.

Damage etc to the Hire Goods

- n. If the Hire Goods are damaged or become inoperable, malfunctions, or unsafe, You must:
 - i. Immediately stop using the Hire Goods; and
 - ii. Take all necessary steps to prevent injuries to any persons or damage to any property because of the condition of the Hire Goods.
- o. If the Hire Goods cannot be used by you for any reason, or are subject to down time for whatsoever reason, then you must continue to pay the Hire Rate regardless during that period except if the down time is due to a manufacturer's defect, in which case, the obligation to pay the Hire Rate will be suspended while it is not able to be used due to the manufacturer's defect. You agree that Craven Hire need only attempt to provide a replacement item as soon as possible during any period of the Hire Goods being inoperable due to a manufacturer's defect but otherwise you release Craven Hire from all other claims, loss or damage, including any alleged loss of profits arising from the Hire Goods not being available for your use.

Insurance

- p. You must take out and maintain at your sole cost insurances with a reputable and registered insurer and in the joint names of the hirer and Craven Hire to cover against:
 - i. Damage, and loss to the Hire Goods, including arising from theft or other malicious activity;
 - ii. Public liability insurance for not less than twenty million dollars; and
 - iii. All third party risks including liability for damage or injury of any kind to any property or person.
- q. The replacement cover of the insurance for damage and loss, must be for amounts approved of by Craven Hire, and will be for the full replacement value (new for old) and not its current market or agreed value.
- r. You must provide a copy of the insurance cover to Craven Hire upon request.
- s. You agree that all proceeds payable pursuant to the policy of insurance are held for the benefit of Craven Hire, must be dealt with at the direction of Craven Hire, and

must be paid to Craven Hire upon demand.

- t. You agree to do all things necessary to claim on the policy when circumstances permit, to pay the excess and You will keep Craven Hire fully informed and provide information and documentation to Craven Hire upon request.
- u. You irrevocably indemnify Craven Hire from all claims, demands, liabilities, costs, expense and damages whatsoever arising from the possession, use and/or operation of the Hire Goods while in Your care or possession or during the Hire Term, or otherwise caused by You or others, except to the extent it is caused by Craven Hire negligence.

10. Force Majeure

- a. If circumstances beyond the control of Craven Hire prevent Craven Hire from performing its obligations, Craven Hire may give you notice of the Force Majeure event and how it is impacting Craven Hire, and Craven Hire will be entitled to suspend its obligations for a reasonable period without penalty or other consequence arising to Craven Hire. If such suspension continues for more than 6 months, in the absence of agreement to the contrary, either party may terminate by notice in writing to the other, in which case you agree you are not entitled to a claim against Craven Hire for its non-performance of the contract.

11. PPSA

- a. General
 - i. In this clause: Personal Property Securities Act 2009 (Cth) and any associated regulations is referred to in short as “PPS Law”.
 - ii. References to PPS Law in the contract include references to amended, replacement and successor provisions, acts and regulations.
 - iii. The rights of Craven Hire are in addition to and not in substitution for Craven Hire rights under other law (including PPS Law) and Craven Hire may choose whether to exercise rights under this clause, and/or under other law, as it sees fit.
- b. Security Interest
 - i. You agree that Craven Hire may register security interests arising at law, or by this Agreement. It may register more than one security interest.
 - ii. You agree Craven Hire has a security interest over its Hire Goods.
 - iii. You agree Craven Hire will have a security interest over your plant, equipment, or goods that Craven Hire carries out Works to, as security for payment of all monies owed to Craven Hire in respect of the Works.
 - iv. You agree we have a general security interest over your personal and real property, for all monies owing to us from time to time.
 - v. You agree Craven Hire has a security interest in all goods sold or supplied on

credit, and for all amounts owed to Craven Hire from time to time.

- vi. You consent to registrations, waive your rights to notification, and agree to assist Craven Hire with:

1. ensuring that Craven Hire security interest is enforceable, perfected and otherwise effective under the PPS Law;
2. enabling Craven Hire to exercise rights in connection with the security interest.

c. Enforcement

- i. In addition to any other rights Craven Hire may have, where you are in breach of an obligation to Craven Hire, Craven Hire may appoint a Receiver in respect of the Secured Property, and you agree to pay all costs of the Receiver on a full indemnity basis.

12. Lien

- a. Craven Hire have, and can exercise, a lien over any of Your goods, documents, records, files, plans, and other property left in Craven Hire possession from time to time as security for the payment of All Monies owing to Craven Hire by You from time to time.

13. Limitation of Liability

- a. Nothing in these conditions shall limit or exclude Craven Hire liability for actions that cannot be excluded by law.
- b. To the extent permitted by law:
- i. Craven Hire shall not be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any direct, indirect or consequential liabilities, including loss of profits, loss of business, additional fuel cost, depletion of goodwill and/or similar losses, loss of contract, loss of use, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising under or in connection with the contract; and
 - ii. Craven Hire total liability to You in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this contract shall be limited to the amount invoiced to You.
- c. This clause shall survive termination of the contract.

14. Termination

- a. Without limiting its other rights or remedies, either party may terminate the contract with immediate effect by giving written notice to the other party if:
- i. The other party commits a breach of the contract and (if such a breach is remediable) fails to remedy that breach within 30 business days of that party being notified in writing of the breach;

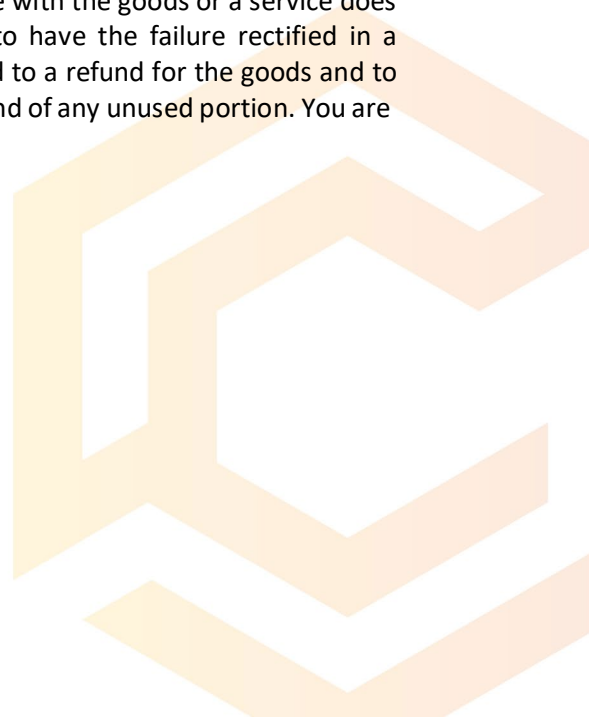
- b. Without limiting its other rights or remedies, Craven Hire may terminate the contract with immediate effect by giving written notice to You if You breach a material term. You agree that the obligation to pay amounts pursuant to pay any amount due under this contract on or before the due date.
- c. Without limiting its other rights or remedies, either party shall have the right to terminate the contract by giving the other party five (5) business days' written notice in advance of the date the Services are to be provided.
- d. Additionally, Craven Hire has the right to immediately terminate any Contract, and recover from Your possession immediately all Craven Hire's property and Goods, including Hire Goods, where it reasonably believes you are going to breach the contract.

15. Consequences of Termination

- a. On termination of the contract for any reason:
 - i. You shall immediately pay to Craven Hire all of Craven Hire outstanding unpaid invoices and interest (if applicable) and, additionally, such amounts as Craven Hire reasonably determine are to be invoiced for work carried out in expectation of performance of the entire contract term;
 - ii. The accrued rights, remedies, obligations, and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination or expiry; and
 - iii. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. ACL

- a. This clause applies only to the extent that the Australian Consumer Laws apply to a transaction or contract with You.
- b. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us, and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a replacement or refund for a major failure with the goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are



also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

17. Intellectual Property

- a. Where Craven Hire have provided designed, drawn, written plans or a schedule of Works, or created any products for Your use, then the copyright in all such designs, drawings, documents, plans, schedules, and products shall remain vested in Craven Hire, as Craven Hire sole property and shall only be used by You on a licence basis and at Craven Hire direction.
- b. You warrant that all designs, specifications, plans, documents, records, goods, or instructions given to Craven Hire by You will not cause Craven Hire to infringe any patent, registered design, or trademark in the execution of Your order and You agree to indemnify us against any action taken by a third party against Craven Hire in respect of any such infringement.
- c. You agree that we may (at no cost) and without restriction, use for the purposes of marketing, Works for other clients of Craven Hire or enter into any competition, any documents, designs, drawings, plans or products which Craven Hire have created for You.

18. General

- a. Assignment and Subcontracting
 - i. Craven Hire may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the contract and may subcontract in any manner any or all its obligations under the contract to any third party or agent. You must not object, prevent or obstruct any such dealing by Craven Hire.
 - ii. You shall not, without the prior written consent of Craven Hire, assign, transfer, charge, subcontract in any other manner with all or any of its rights or obligations under the contract.
- b. Severance
 - i. If a court or any other competent authority finds that any provision of the contract (or part of any provision) is invalid, illegal, or unenforceable, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the contract shall not be affected.
 - ii. If any invalid, unenforceable, or illegal provision of the contract would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid, and enforceable.
- c. No Partnership
 - i. Nothing in the contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor



constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

d. Variation

- i. Any variation, including the introduction of any additional terms and conditions, to the contract, shall only be binding when agreed in writing and signed by Craven Hire and You.

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