

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name (if different from above):				
Physical Address:			State:	Postcode:
Billing Address:			State:	Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No.:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
ABN:		ACN:		Date Established <i>(current owners)</i> :
Nature of Business:				
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.:	
Private Address:			State:	Postcode:
Driver's Licence No.:		Phone No.:		Mobile No.:
(2) Full Name:			D.O.B.:	
Private Address:			State:	Postcode:
Driver's Licence No.:		Phone No.:		Mobile No.:
Account Terms: <input type="checkbox"/> 30 Days following invoice <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO		
Accounts Email Address:				
Accounts Contact:			Phone No.:	
Bank and Branch:			Account No.:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Castella Group Pty Ltd T/A Duralift which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

SIGNED (CLIENT): _____ **SIGNED (DURALIFT):** _____
 Name: _____ Name: _____
 Position: _____ Position: _____
WITNESS TO CLIENT'S SIGNATURE:
Signed: _____ Name: _____ Date: _____

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1. Definitions

- 1.1 "Duralift" means Castella Group Pty Ltd ATF Castella Trading Trust T/A Duralift, its successors and assigns or any person acting on behalf of and with the authority of Castella Group Pty Ltd ATF Castella Trading Trust T/A Duralift.
- 1.2 "Client" 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 Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Duralift to the Client at the Client'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 Duralift to the Client (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 Duralift to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Duralift to the Client.
- 1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between Duralift and the Client in accordance with clause 5 below.
- 1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Duralift.
- 2.3 Goods and Equipment are supplied by Duralift based only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions.

3. Electronic Transactions (Victoria) Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that sAct or any Regulations referred to in that Act.

4. Change in Control

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

5. Price and Payment

- 5.1 At Duralift's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Duralift to the Client; or
 - (b) the Price as at the date of delivery of the Goods/Equipment according to Duralift's current price list; or
 - (c) Duralift's quoted price (subject to clause (c)) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Duralift reserves the right to change the Price if a variation to Duralift's quotation is requested. Any variation from the plan of scheduled Goods or Equipment to be supplied or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances availability of machinery, or as a result of any increase to Duralift in the cost of Goods and labour) will be charged for on the basis of Duralift's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by Duralift within ten (10) working days. Failure to do so will entitle Duralift to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
- 5.3 At Duralift's sole discretion a deposit may be required.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Duralift, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Duralift.

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- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Duralift.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Duralift nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Duralift an amount equal to any GST Duralift must pay for any supply by Duralift under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods/Equipment

- 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Duralift's address; or
 - (b) Duralift (or Duralift's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 6.2 Delivery of the Goods/Equipment to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.3 At Duralift's sole discretion the cost of delivery is in addition to the Price.
- 6.4 Any time specified by Duralift for delivery of the Goods/Equipment is an estimate only and Duralift will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that Duralift is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client, then Duralift shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 The Client shall be responsible for free access by Duralift to the site on which the Equipment is located. If there are any delays due to free access not being available, then the Client shall be responsible and shall reimburse Duralift for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by Duralift due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by Duralift or returned to Duralift's premises.

7. Risk to Goods

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Duralift is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Duralift is sufficient evidence of Duralift's rights to receive the insurance proceeds without the need for any person dealing with Duralift to make further enquiries.
- 7.3 If the Client requests Duralift to leave Goods outside Duralift's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

8. Title to Goods

- 8.1 Duralift and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid Duralift all amounts owing to Duralift; and
 - (b) the Client has met all of its other obligations to Duralift.
- 8.2 Receipt by Duralift 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.
- 8.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 8.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to Duralift on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Duralift and must pay to Duralift the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Duralift and must pay or deliver the proceeds to Duralift on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Duralift and must sell, dispose of or return the resulting product to Duralift as it so directs.
 - (e) the Client irrevocably authorises Duralift to enter any premises where Duralift believes the Goods are kept and recover possession of the Goods.

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- (f) Duralift may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client 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 Duralift.
- (h) Duralift may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

9. Personal Property Securities Act 2009 (“PPSA”)

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to Duralift for Services – that have previously been supplied and that will be supplied in the future by Duralift to the Client.
- 9.3 The Client 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 Duralift 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 9.2(a)(i) or 9.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, Duralift 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 Duralift;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of Duralift;
 - (e) immediately advise Duralift 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.
- 9.4 Duralift and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Duralift, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by Duralift under clauses 9.2 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of Duralift agreeing to supply the Goods/Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies Duralift from and against all Duralift’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Duralift’s rights under this clause.
- 10.3 The Client irrevocably appoints Duralift and each director of Duralift as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client’s behalf.

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

- 11.1 The Client must inspect the Goods/Equipment immediately on delivery and must within seven (7) days of delivery notify Duralift in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client 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 Client must allow Duralift to inspect the Goods/Equipment.
- 11.2 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**).

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- 11.3 Duralift acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Duralift makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Duralift's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, Duralift's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Duralift is required to replace the Goods under this clause or the CCA, but is unable to do so, Duralift may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, Duralift'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 Client by Duralift at Duralift's sole discretion;
 - (b) limited to any warranty to which Duralift is entitled, if Duralift did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 11.1; and
 - (b) Duralift has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client'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.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Duralift 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 Client failing to properly maintain or store any Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client 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 Client failing to follow any instructions or guidelines provided by Duralift;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Duralift as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Duralift has agreed to provide the Client with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 11.10.

12. Default and Consequences of Default

- 12.1 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 Duralift's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes Duralift any money the Client shall indemnify Duralift from and against all costs and disbursements incurred by Duralift in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Duralift's contract default fee, and bank dishonour fees).
- 12.3 Further to any other rights or remedies Duralift may have under this contract, if a Client has made payment to Duralift, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Duralift under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 12.4 Without prejudice to any other remedies Duralift may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Duralift may suspend or terminate the supply of Goods/Equipment to the Client. Duralift will not be liable to the Client for any loss or damage the Client suffers because Duralift has exercised its rights under this clause.
- 12.5 Without prejudice to Duralift's other remedies at law Duralift shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Duralift shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Duralift becomes overdue, or in Duralift's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Duralift;
 - (c) the Client 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

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13. Cancellation

- 13.1 Without prejudice to any other remedies Duralift may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Duralift may suspend or terminate the supply of Goods/Equipment to the Client. Duralift will not be liable to the Client for any loss or damage the Client suffers because Duralift has exercised its rights under this clause.
- 13.2 Duralift 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 delivered by giving written notice to the Client. On giving such notice Duralift shall repay to the Client any money paid by the Client for the Goods/Equipment. Duralift shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Duralift as a direct result of the cancellation (including, but not limited to, any loss of profits).

14. Privacy Act 1988

- 14.1 The Client agrees for Duralift to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Duralift.
- 14.2 The Client agrees that Duralift may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 14.3 The Client consents to Duralift being given a consumer credit report to collect overdue payment on commercial credit.
- 14.4 The Client agrees that personal credit information provided may be used and retained by Duralift for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 14.5 Duralift may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 14.6 The information given to the CRB may include:
 - (a) personal information as outlined in 14.1 above;
 - (b) name of the credit provider and that Duralift is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Duralift has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Duralift, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 14.7 The Client shall have the right to request (by e-mail) from Duralift:
 - (a) a copy of the information about the Client retained by Duralift and the right to request that Duralift correct any incorrect information; and
 - (b) that Duralift does not disclose any personal information about the Client for the purpose of direct marketing.
- 14.8 Duralift will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 14.9 The Client can make a privacy complaint by contacting Duralift via e-mail. Duralift will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

15. Service of Notices

- 15.1 Any written notice given under this contract shall be deemed to have been given and received:

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- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 15.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

16. General

- 16.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, in which Duralift has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 16.3 Subject to clause 11, Duralift shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Duralift of these terms and conditions (alternatively Duralift's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 16.5 The Client agrees that Duralift may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Duralift to provide Goods to the Client.
- 16.6 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.
- 16.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

Additional Terms & Conditions Applicable to Hire Only

17. Hire Period

- 17.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 17.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from Duralift's premises and will continue until the return of the Equipment to Duralift's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 17.3 If Duralift agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Duralift's premises and continue until the Client notifies Duralift that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 17.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 17.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Duralift confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Duralift immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

18. Risk to Equipment

- 18.1 Duralift retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 18.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Duralift for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 18.3 The Client will insure, or self-insure, Duralift's interest in the Equipment 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 arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 18.4 The Client accepts full responsibility for and shall keep Duralift indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

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19. Title to Equipment

- 19.1 The Equipment is and will at all times remain the absolute property of Duralift.
- 19.2 If the Client fails to return the Equipment to Duralift then Duralift or Duralift's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 19.3 The Client is not authorised to pledge Duralift's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

20. Client's Responsibilities

- 20.1 The Client shall:
 - (a) maintain the Equipment as is required by Duralift (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
 - (b) Notify Duralift immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Duralift or posted on the Equipment;
 - (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Duralift upon request;
 - (f) comply with all work health and safety laws relating to the Equipment and its operation;
 - (g) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Duralift;
 - (h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
 - (i) 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;
 - (j) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
 - (k) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (n) indemnify and hold harmless Duralift in respect of all claims arising out of the Client's use of the Equipment.
- 20.2 Immediately on request by Duralift the Client will pay:
 - (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Duralift;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
 - (e) any lost hire fees Duralift would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in Duralift's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (g) the cost of fuels and consumables provided by Duralift and used by the Client.

21. Wet Hire

- 21.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of Duralift and operates the Equipment in accordance with the Client's instructions. As such Duralift shall not be liable for any actions of the operator in following the Client's instructions.

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