

1. Overview

- 1.1.1. The parties to this Agreement are:
- 1.1.2. Adelaide EWP (“**Adelaide EWP**”/“**AEWP**”); and
- 1.1.3. The person who has given an Order to Adelaide EWP which Adelaide EWP has accepted or who has otherwise agreed to be bound by these General Conditions of Sale (“**Customer**”).
- 1.2. These terms and conditions govern the supply by Adelaide EWP of the following:
 - 1.2.1. Rentals;
 - 1.2.2. Sales of Used Vehicles;
 - 1.2.3. Maintenance; and
 - 1.2.4. Such other goods or services as Adelaide EWP may agree to provide to the Customer.
- 1.3. Any quotation given by Adelaide EWP is not binding on Adelaide EWP. Any supply of Goods or Services by Adelaide EWP will be governed by these General Conditions of Sale.

2. Interpretation

- 2.1. Except where the contrary intention appears, time is of the essence of all of the Customer’s obligations under this Agreement;
- 2.2. In this Agreement the following words have special definitions which apply unless the contrary intention appears in this Agreement:
 - 2.2.1. “**ACL**” means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) as in force from time to time;
 - 2.2.2. “**Adelaide EWP**” has the meaning given to it in clause 1.1.2;
 - 2.2.3. “**Adelaide EWP’s premises**” means 12 Trimmer Road ELIZABETH SOUTH SA 5112;
 - 2.2.4. “**Adelaide EWP’s website**” means <http://www.ewp.com.au>;
 - 2.2.5. “**Collateral**” has the meaning given to it in clause 10.1;
 - 2.2.6. “**Customer**” has the meaning given to it in clause 1.1.3;
 - 2.2.7. “**Goods**” includes Used Vehicles or any other goods which may be supplied by Adelaide EWP to the Customer;
 - 2.2.8. “**GST**” means Goods and Services Tax imposed pursuant to the *A New Tax System (Goods And Services Tax) Act 1999* (Cth) as in force from time to time;
 - 2.2.9. “**Maintenance**” means repair, maintenance or modification services provided by Adelaide EWP to the Customer in respect of vehicles owned by the Customer;
 - 2.2.10. “**Order**” means a completed Adelaide EWP purchase order form. A copy of the form is available at Adelaide EWP’s website and at Adelaide EWP’s premises;
 - 2.2.11. “**PPSA**” means the *Personal Property Securities Act 2009* (Cth) as in force from time to time;
 - 2.2.12. “**Price**” means the amount to be paid for Goods or Services as determined in accordance with clause 3 herein;
 - 2.2.13. “**Rental**” means a vehicle and/or plant rented out to the Customer by Adelaide EWP including any associated tools, accessories and spare parts;
 - 2.2.14. “**Rental Period**” means the period of time specified in an Order which has been accepted by Adelaide EWP plus any extensions of that period under this Agreement;
 - 2.2.15. “**Serviced Vehicles**” means vehicles which are owned by the Customer and are delivered to Adelaide EWP for the purpose of Adelaide EWP performing Maintenance in respect of those vehicles;
 - 2.2.16. “**Services**” includes Rentals, Maintenance and any other service which may be supplied by Adelaide EWP to the Customer;
 - 2.2.17. “**Stamp Duty**” means stamp duty imposed pursuant to the *Stamp Duties Act 1923* (SA) as in force from time to time; and
 - 2.2.18. “**Used Vehicles**” means second-hand vehicles which are sold to the Customer by Adelaide EWP.

3. Determination of price

- 3.1. Adelaide EWP may give the Customer a quotation for Goods or Services to be provided in accordance with the terms of this Agreement. Quotations are an invitation to treat only and are not binding on Adelaide EWP.
- 3.2. The Customer may place an Order with Adelaide EWP for Adelaide EWP to provide the Goods or Services specified in the Order to the Customer for the Price specified in the Order.
- 3.3. The Price may be explicitly apportioned to Goods and Services in an Order but if this has not occurred then each Good or Service to be supplied pursuant to this Agreement and described in the Order will have so much of the Price apportioned to it as the market value of that Good or Service bears in relation to the market value of all the Goods or Services specified in the Order.
- 3.4. In the case of supplies of Rentals, subject to this Agreement the price will be determined as follows:
 - 3.4.1. A price per billing unit will be stated in the Order;
 - 3.4.2. For each 8 hours or part thereof that the Rental is used by the Customer within a 12 hour period, one billing unit will be charged;
 - 3.4.3. For each 120km or part thereof that the Rental is driven by the Customer, one billing unit will be charged;
 - 3.4.4. One billing unit will be subtracted from the total number of billing units resulting from adding the billing units chargeable under clause 3.4.2 and 3.4.3 unless this would result in zero billing units being charged to the Customer;
 - 3.4.5. The Price of the Rental will be equal to the number of billing units determined in accordance with this clause multiplied by the agreed price per billing unit.
- 3.5. In the case of supplies of Used Vehicles and Maintenance, the Price will be the Price stated in the Order.
- 3.6. If the parties agree on a Price for any Goods or Services and the supply of those Goods or Services is deferred until a time more than 1 month after agreement on Price has been reached, the Price agreed upon will be increased in accordance with the Consumer Price Index (All Groups, Adelaide).

4. Supplies Generally

- 4.1. The Customer acknowledges in respect of any Goods or Services to be acquired by the Customer that:
 - 4.1.1. the Customer acquires the Goods or Services only for the purpose for which the Goods or Services would ordinarily be used or acquired;
 - 4.1.2. the Customer has not relied on the skill or judgment of Adelaide EWP as to whether the Goods or Services are fit for any other purpose; and
 - 4.1.3. the Customer has determined that the Goods and/or Services are suitable for the purpose that the Customer requires those Goods and/or Services for.
- 4.2. In the event that interruptions or delays resulting from matters which are outside Adelaide EWP’s control cause Adelaide EWP to incur additional costs in providing the Goods or Services, the Price will be increased by the value of those costs.
- 4.3. Any time limit established under this Agreement for Adelaide EWP to provide Goods or Services will not run while the Customer is in breach of any term of this Agreement.

5. Supplies of Rentals

- 5.1. Rentals will be collected by the Customer from Adelaide EWP’s premises or such other location as the parties have agreed in writing at the commencement of the Rental Period.
- 5.2. Rentals are supplied on a dry hire basis and the Customer is responsible for providing an operator and paying wages and all related expenses and complying with any relevant laws including payment of Return to Work SA levies in relation to such operator.
- 5.3. The Customer will be liable to pay the Price for the Rental for the whole of the Rental Period whether or not the Rental is collected at the commencement of the Rental Period or at all.
- 5.4. Adelaide EWP may agree to transport Rentals to a location nominated by the Customer in the Order. In this case:
 - 5.4.1. Notwithstanding anything else in this clause 5.4, Adelaide EWP will be entitled to compensation for expenses incurred in transporting the Rental and such compensation will be an amount payable by the Customer under this Agreement;
 - 5.4.2. Adelaide EWP will not be responsible for loss resulting from Adelaide EWP’s failure to deliver the Rental by the agreed time or at all except where Adelaide EWP has acted in bad faith and, in such a case, Adelaide EWP’s liability for such loss will be limited to the Price to be paid for the Rental;

- 5.4.3. Provided that Adelaide EWP has used its best endeavors to deliver the Rental to the location nominated by the Customer in the Order by the time appointed for delivery, the Customer will remain liable for the full Price of the Rental whether or not the Rental has been delivered; and
- 5.4.4. Where delivery of the Rental is delayed or cancelled due to Adelaide EWP's failure to use its best endeavors to complete delivery, the Price payable by the Customer for the Rental will be reduced in the same proportion as the length of the Rental Period for which the Customer does not have possession of the Rental as a consequence of such failure bears to the whole of the Rental Period.
- 5.5. The Customer warrants that all persons who will operate Rentals:
- 5.5.1.1. are over the age of 21 years;
 - 5.5.1.2. have not been convicted of any offence relating to the driving of a motor vehicle under the influence of drugs or with more than the legally prescribed level of alcohol content;
 - 5.5.1.3. have not been refused any motor vehicle insurance;
 - 5.5.1.4. have been provided with all safety information provided with the Rental;
 - 5.5.1.5. will wear suitable clothing and any protective equipment required or recommended by the safety and operating instructions produced by the manufacturer of the Rental or by Adelaide EWP at all times while using the Rental;
 - 5.5.1.6. hold current licenses legally entitling them to do so; and
 - 5.5.1.7. are suitable persons for the task of operating the Rental.
- 5.6. The Customer will:
- 5.6.1. attach to the Rental and maintain any safety signs supplied with the Rental and bring them to the attention of any person using the Rental and ensure that they are clearly legible by the operator of the Rental;
 - 5.6.2. not remove or countenance the removal of the Rental from the State of South Australia without the prior written permission of Adelaide EWP and such permission may be withheld by Adelaide EWP without cause;
 - 5.6.3. not give possession of the Rental to any person other than Adelaide EWP;
 - 5.6.4. not create or purport to create any proprietary right or security interest in the Rental, including any security interest within the meaning of the PPSA;
 - 5.6.5. use the Rental in a proper manner and in accordance with the operations manual (including supplements) and only for the purpose for which it was designed;
 - 5.6.6. promptly pay any and all fines, penalties or other charges arising out of the use of the Rental during the Rental Period including, without limitation, speeding fines or, if Adelaide EWP makes payment of same, to reimburse Adelaide EWP for such payment;
 - 5.6.7. if requested by Adelaide EWP, advise Adelaide EWP of the current location of the Rental and grant Adelaide EWP access to the Rental for the purposes of inspecting same. The Customer will, if necessary, procure permission for Adelaide EWP representatives to enter the property on which the Rental is situated for this purpose;
 - 5.6.8. in relation to any place where the Customer keeps the Rental, the Customer will immediately procure permission for Adelaide EWP's employees or agents to enter the location of the Rental for the purpose of retaking possession of the Rental. This obligation survives termination of this Agreement;
 - 5.6.9. return the Rental to Adelaide EWP's premises or such other location as the parties have agreed in writing on or before the end of the Rental Period;
 - 5.6.10. comply with all statutory or other legal requirements relating to the use of the Rental;
 - 5.6.11. maintain reasonable insurance cover for any liabilities which it may incur in connection with the use of the Rental, including any insurance which Adelaide EWP at any time reasonably requests the Customer to obtain, and will provide Adelaide EWP with a certificate of such insurance upon request;
 - 5.6.12. immediately notify Adelaide EWP of any failure of the Rental of any nature whatsoever;
 - 5.6.13. clean and maintain the Rental in good and substantial repair and condition, reasonable wear and tear excepted and supply all fuel, oil and grease necessary for operation, service and maintenance of the Rental;
 - 5.6.14. repair or replace any flat and/or damaged tyres;
 - 5.6.15. not alter or add to the Rental or deface or erase any identifying mark, plate or number on or in the Rental or in any other manner interfere with the Rental;
 - 5.6.16. at all times during the Rental Period, hold all licenses, permits and qualifications necessary in the use, operation and possession of the Rental; and
 - 5.6.17. return the Rental to Adelaide EWP's premises by close of business on each Friday (or if Friday is a public holiday, by close of business on the last business day before Friday) for maintenance conducted by Adelaide EWP;
 - 5.6.18. ensure that any additional equipment required for the safe execution of the work to be carried out with the Rental, including safety harnesses, earth attachment leads, road traffic equipment etc, will be used by the Customer whether or not Adelaide EWP has supplied the Customer with the same.
- 5.7. The Customer indemnifies Adelaide EWP for:
- 5.7.1. any damage to or deterioration of Rentals, other than reasonable wear and tear, including without limitation theft or vandalism occurring during the Rental Period or caused by events taking place during the Rental Period including the cost of cleaning or repainting;
 - 5.7.2. the cost to Adelaide EWP of freight or other charges, costs or expenses associated with retrieving the Rental in the event that it is not returned to Adelaide EWP's premises on or before the end of the Rental Period including the cost of making good any damage caused to the Rental;
 - 5.7.3. any suits or claims of whatsoever nature, including for negligence of Adelaide EWP, against Adelaide EWP by persons suffering loss in connection with the use of the Rental by the Customer during the Rental Period; and
 - 5.7.4. for any loss or expense incurred by Adelaide EWP as a result of the Customer's failure to return the Rental to Adelaide EWP's premises at the end of the Rental Period including:
 - 5.7.4.1. any contractual damages which Adelaide EWP may be required to pay to third parties resulting from Adelaide EWP's inability to satisfy contractual obligations to those parties; and
 - 5.7.4.2. any suits or claims brought against Adelaide EWP by third persons who have suffered loss as a result of Adelaide EWP taking reasonable steps to retake possession of the Rental.
- 5.8. In the event that the Rental is returned to Adelaide EWP before the end of the Rental Period, the Customer will nevertheless remain liable for the payment of the Price for the remainder of the Rental Period.
- 5.9. In the event that the Rental is not returned by the Customer on or before the end of the Rental Period, Adelaide EWP may immediately and without notice take possession of the Rental or, by written notice to the Customer, extend the Rental Period by the greater of:
- 5.9.1.1. 1 week; or
 - 5.9.1.2. the length of the initial Rental Period.
- 5.10. For the purposes of this clause 5, the Rental will not be taken to have been returned to Adelaide EWP unless:
- 5.10.1. If the Rental is to be returned to a location other than Adelaide EWP's premises, Adelaide EWP has access to the Rental and is able to move the Rental to Adelaide EWP's premises under the Rental's own power;
 - 5.10.2. The Rental is in a clean state and in good repair, fair wear and tear excepted; and
 - 5.10.3. The Rental has a full tank of fuel or the Customer has reimbursed Adelaide EWP for the cost of a full tank of fuel.
- 5.11. In the event that the Rental Period is extended in accordance with clause 5.9, the amount payable by the Customer to Adelaide EWP in respect of the Rental will be increased by the proportion that the Rental Period as extended bears to the Rental Period before the extension with the intention that the price for the Rental per day of the Rental Period will remain constant following the extension.
- 5.12. If the Rental is collected or returned outside of the hours of 6am to 6pm Monday to Friday excluding public holidays, Adelaide EWP may charge an after hours opening fee of \$100.
- 5.13. The Customer will pay a \$100 administration fee for each speeding fine associated with the Rental during the Rental Period.
- 5.14. Notwithstanding anything else in this Agreement, Adelaide EWP may, by written notice to the Customer, shorten the Rental Period such that it will expire 2 days after the notice is given and require the return of the Rental at the end of the abridged Rental Period.

6. Supplies of Used Vehicles

- 6.1. The Price for the Used Vehicle becomes outstanding upon Adelaide EWP agreeing to sell the Used Vehicle to the Customer.

- 6.2. Unless the parties otherwise agree, Used Vehicles will be collected by the Customer from Adelaide EWP's premises at a time which is convenient for Adelaide EWP and is not more than 7 days after Adelaide EWP has received payment of the Price for the Used Vehicle as cleared funds.
- 6.3. Used Vehicles remain the property of Adelaide EWP until the whole of the Price of the Order in respect of which the Used Vehicle is supplied has been paid whether or not the whole or any part of that Price is attributable to the Used Vehicle.
- 6.4. In the event that Used Vehicles are not collected by the Customer in accordance with clause 6.1, Adelaide EWP may charge reasonable storage fees in respect of the Used Vehicle and the Customer undertakes to pay those storage fees.
- 6.5. While any amount charged under this Agreement, including storage fees charged under clause 6.4, remains outstanding, Adelaide EWP has a lien over the Used Vehicle and is entitled to retain possession of the Used Vehicle until such fees are paid.
- 6.6. Notwithstanding this clause 6, the risk in the Used Vehicles passes to the Customer from the date that the Order pursuant to which the Used Vehicles are to be supplied is accepted by Adelaide EWP.
- 6.7. In the event that a Used Vehicle comes into the possession of the Customer prior to payment of the whole of the Price for the Used Vehicle:
 - 6.7.1. If the Customer sells or purports to sell the Used Vehicle to a third person, the Customer will hold so much of the proceeds of that sale as represents the unpaid Price on trust for Adelaide EWP;
 - 6.7.2. Adelaide EWP may enter upon any premises of the Customer on which such Used Vehicle may be located for the purposes of retaking possession of the Used Vehicle and Adelaide EWP will not be liable to the Customer for any damage caused to the property of the Customer by reason of such entry.

NOTE: Adelaide EWP may offer a limited warranty on Used Vehicles supplied by Adelaide EWP as set out in the schedule to this Agreement.

7. Supplies of Maintenance

- 7.1. The Price for Maintenance becomes outstanding upon Adelaide EWP agreeing to perform the Maintenance.
- 7.2. Unless otherwise agreed, Serviced Vehicles will be delivered to Adelaide EWP's premises by the Customer on the date specified in the Order.
- 7.3. Adelaide EWP will complete Maintenance within 90 days, or such other period as may be agreed in writing, from the date on which Adelaide EWP receives full engineering technical details, if applicable, or from the date on which the Serviced Vehicle is delivered to Adelaide EWP's premises, whichever is the later;
- 7.4. Once the Maintenance has been completed, Adelaide EWP will notify the Customer that the Serviced Vehicles are ready for collection. A failure by Adelaide EWP to give such notice is not a breach giving rise to a right to terminate this Agreement and nor is it a repudiation of this Agreement.
- 7.5. Unless otherwise agreed, Serviced Vehicles are to be collected from Adelaide EWP's premises within 7 days of the Customer receiving notice that the Serviced Vehicles are ready for collection.
- 7.6. In the event that the Serviced Vehicles are not collected by the Customer within the period determined in accordance with clause 7.5, Adelaide EWP may charge reasonable storage fees in respect of the Serviced Vehicles and the Customer undertakes to pay those storage fees.
- 7.7. In the event that the Maintenance has been completed and the whole of the Price of the Order in respect of which the Maintenance was provided has not been paid:
 - 7.7.1. Adelaide EWP may retain possession of the Serviced Vehicles until such time as the whole of the Price of the Order is paid;
 - 7.7.2. storage fees under clause 7.6 may be charged in respect of any period during which Adelaide EWP is retaining possession of the Serviced Vehicles under this clause 7.7;
 - 7.7.3. Adelaide EWP is entitled to a lien over the Serviced Vehicles in respect of so much of that Price as remains unpaid plus any storage fees charged under clause 7.6; and
 - 7.7.4. Adelaide EWP may, if any part of the Price or storage fees remains outstanding for more than 28 days, sell the Serviced Vehicles and account to the Customer for the net proceeds of that sale.
- 7.8. In the event that Adelaide EWP is required to relocate any cab/chassis running gear such as fuel tanks, air receivers, exhaust stacks and the like, the Customer will pay Adelaide EWP \$80 plus GST per hour of labour to do so and cost plus 15% for any materials supplied or required by Adelaide EWP in connection with such works.

8. Payment terms and security

- 8.1. Payment shall be made in Australian dollars.
- 8.2. Unless otherwise agreed, invoices rendered by Adelaide EWP are to be paid with 7 days of the date of the invoice.
- 8.3. Adelaide EWP may charge default interest on any amount outstanding under this Agreement at a rate equal to the Reserve Bank of Australia cash rate plus six percent per annum compounded daily.
- 8.4. All amounts due under this Agreement to be paid by the Customer to Adelaide EWP shall be paid in full (without any deduction or withholding other than – if any – that required by law in respect of withholding or deduction of tax) and the Customer shall not be entitled to assert any credit set-off or counterclaim against Adelaide EWP in order to justify withholding payment of any such amount in whole or in part.
- 8.5. The Customer charges all real and personal property held by the Customer as at the date of this Agreement and any property acquired by the Customer during the term of this Agreement with payment of any amounts outstanding to Adelaide EWP from time to time under this Agreement. In the case of property acquired by the Customer during the term of this Agreement, the charge is granted upon such property being acquired by the Customer.
- 8.6. The Customer consents to the lodgment of caveats in respect of charges granted pursuant to this clause 8 and, without limiting clause 9 herein, the Customer will pay Adelaide EWP's costs of lodging or removing such caveats upon request.
- 8.7. Unless otherwise agreed, all payments must be made by way of bank cheque or electronic funds transfer to the following account:
Westpac
BSB 035-047
Account No: 186877.

9. Costs

- 9.1. In the event that Adelaide EWP incurs any cost or expense in obtaining or attempting to obtain payment from the Customer or in selling property of the Customer over which Adelaide EWP has a lien, the Customer agrees to reimburse Adelaide EWP for such costs and expenses. Legal costs will be reimbursed on a solicitor-client basis and other costs will be reimbursed in full whether or not they have been charged to Adelaide EWP at prevailing market rates.
- 9.2. The Customer acknowledges that debt collection agencies may charge Adelaide EWP a commission on sums recovered from the Customer and that this commission may be up to 50% of the amount recovered. The Customer agrees that it will reimburse Adelaide EWP for such commissions.

10. PPSA

- 10.1. The Customer acknowledges that this Agreement may create a security interest, within the meaning of the PPSA, in personal property of the Customer or in property of Adelaide EWP (this property being "Collateral").
- 10.2. In the event that the Collateral to which a security interest relates is not predominantly used for personal, domestic or household use, the enforcement provisions listed in s115 of the PPSA are excluded from application to that Collateral to the full extent permitted under the PPSA other than the following sections: s117, s118, s123, s126, s128, s129(1) and all of Division 6 of Part 4.3 of the PPSA.
- 10.3. If, under this Agreement, Adelaide EWP acquires a security interest in Collateral owned by the Customer which is predominantly used for personal, domestic or household use, the Customer must give written notice to Adelaide EWP of that predominant use within 14 days of the grant of the security interest. In the event that the Customer does not give such a notice, the Customer represents to Adelaide EWP that the Collateral is not predominantly used for personal, domestic or household use.
- 10.4. The Customer will do all things reasonably required of the Customer by Adelaide EWP to allow Adelaide EWP to register its security interest under the PPSA and enforce any rights available to Adelaide EWP in relation to the security interest.
- 10.5. The Customer will reimburse Adelaide EWP for maintenance fees payable by Adelaide EWP under s168 of the PPSA.
- 10.6. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.

10.7. The Customer and Adelaide EWP both agree that they will not disclose information of the kind that can be requested under s275(1) of the PPSA. The Customer will use its best endeavours to ensure that none of the conditions listed in s275(7) of the PPSA are satisfied during the term of this Agreement.

11. ACL

- 11.1. In respect of supplies of Goods, Adelaide EWP limits its liability for breach of consumer guarantees under the ACL to Adelaide EWP's choice of the following:
- 11.1.1. the replacement of the Goods or the supply of equivalent Goods;
 - 11.1.2. the repair of the Goods;
 - 11.1.3. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - 11.1.4. the payment of the cost of having the Goods repaired.
- 11.2. In respect of supplies of Services, Adelaide EWP limits its liability for breach of consumer guarantees under the ACL to Adelaide EWP's choice of the following:
- 11.2.1. the supplying of the Services again; or
 - 11.2.2. the payment of the cost of having the Services supplied again.
- 11.3. Nothing in this Agreement is to be taken to limit the liability of Adelaide EWP to a greater extent than permitted by s64A of the ACL.
- 11.4. The Customer acknowledges that Adelaide EWP does not provide Goods or Services which are to be used for personal, domestic or household use.

12. Sale of Goods Act 1895 (SA)

- 12.1. No term shall be implied into this contract by operation of s12 to s15 of the *Sale of Goods Act 1895 (SA)*.

13. Termination

- 13.1. Adelaide EWP will be entitled to terminate this Agreement if any of the following occur:
- 13.1.1. An amount due under this Agreement is not paid by the Customer within 7 days of becoming due;
 - 13.1.2. If the Customer was carrying on a business at the time that this Agreement commenced, the Customer ceases to carry on that business;
 - 13.1.3. Any judgment is entered against the Customer and is not satisfied by the Customer within 14 days;
 - 13.1.4. If the Customer is a natural person:
 - 13.1.4.1. the Customer commits an act of bankruptcy; or
 - 13.1.4.2. the Customer becomes insolvent.
 - 13.1.5. If the Customer is a corporation:
 - 13.1.5.1. becomes insolvent or is presumed to be insolvent under the *Corporations Act 2001 (Cth)*;
 - 13.1.5.2. an order is made for the winding up of the Customer; or
 - 13.1.5.3. the Customer is placed under external administration.
 - 13.1.6. The Customer has breached one or more of the terms of this Agreement and has failed to remedy that breach within 7 days of Adelaide EWP giving the Customer written notice of the breach; and
 - 13.1.7. Adelaide EWP has reasonable grounds on which to doubt the credit worthiness of the Customer and the Customer has not provided Adelaide EWP with evidence of its credit worthiness within 7 days of Adelaide EWP making a written request for such evidence.
- 13.2. Any security interest in Collateral of the Customer will survive the termination of this Agreement.
- 13.3. If this Agreement is terminated:
- 13.3.1. any amount outstanding to Adelaide EWP will become immediately due and payable;
 - 13.3.2. clause 8 will continue to apply in relation to any amount which is payable to Adelaide EWP; and
 - 13.3.3. any security interest created by this Agreement prior to termination will continue to exist after termination.
- 13.4. Either party may terminate this Agreement without cause by giving 14 days written notice to the other party.

14. Liquidated damages

- 14.1. In the event that this Agreement is terminated, except where Adelaide EWP has terminated the Agreement in accordance with clause 13.4 herein, liquidated damages will be payable to Adelaide EWP in accordance with this clause 14.
- 14.2. In the event that Adelaide EWP was to provide Maintenance to the Customer:
- 14.2.1. if the Serviced Vehicles have not been delivered to Adelaide EWP's premises at the date of termination: 5% of the Price for that Maintenance; and
 - 14.2.2. if the Serviced Vehicles have been delivered to Adelaide EWP's premises at the date of termination: 15% of the Price for that Maintenance.
- 14.3. In the event that Adelaide EWP was to provide a Used Vehicle to the Customer, 2% of the Price of the Used Vehicle.
- 14.4. In the event that Adelaide EWP was to provide a Rental to the Customer:
- 14.4.1. If termination occurs at least 21 days before the Rental Period commences: 10% of the Price for that Rental attributable to the first 3 weeks of the Rental Period;
 - 14.4.2. If termination occurs less than 21 days before the Rental Period commences: 80% of the Price for that Rental attributable to the first 3 weeks of the Rental Period; or
 - 14.4.3. If termination occurs during the Rental Period: 100% of the remaining Price attributable to the following 6 weeks of the Rental Period.
- 14.5. For the purposes of this clause 14, references to Price are references to the Price calculated at the date of termination.
- 14.6. Adelaide EWP may elect to sue the Customer for the loss suffered as a result of the Customer's breach of this Agreement rather than rely on the rights created by this clause 14.
- 14.7. Any right to liquidated damages under this clause is in addition to any other amount payable under this Agreement other than the Price.

15. Indemnity

- 15.1. The Customer indemnifies and holds Adelaide EWP harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Adelaide EWP and from and against all actions, proceedings, claims or demands made against Adelaide EWP, arising:
- 15.1.1. As a result of the Customer's failure to:
 - 15.1.1.1. ensure that any safety markings on Rentals or Used Vehicles are adequately displayed;
 - 15.1.1.2. bring to the attention of users of Rentals or Used Vehicles safety manuals and updates thereof applicable in relation to the goods;
 - 15.1.1.3. otherwise comply with any laws, rules, standards or regulations applicable in relation to the Rentals or Used Vehicles; or
 - 15.1.1.4. give adequate instructions to Adelaide EWP.
 - 15.1.2. As a result of any other negligence or other breach of duty by the Customer.
 - 15.1.3. As a result of compliance or adherence by Adelaide EWP with any instructions of the Customer in relation to Goods or Services supplied under this Agreement and from and against all actions, proceedings, claims or demands made against Adelaide EWP as a result of such compliance or adherence.

16. Limitation of liability

- 16.1. To the extent permitted by law, Adelaide EWP will not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof:
- 16.1.1. for any increased costs or expenses incurred by the Customer;
 - 16.1.2. for any loss of profit, business, contracts, revenue or anticipated savings; or
 - 16.1.3. for any special, indirect or consequential damage of any nature whatsoever.
- 16.2. No claim may be brought against Adelaide EWP for breach of this Agreement or for liability arising in relation to the supply or use of Rentals, Used Vehicles or Maintenance more than 6 months after the supply is made.
- 16.3. Adelaide EWP's liability for breach of this Agreement or arising from the subject matter of this Agreement, including liability arising from negligence, is limited to the Price actually paid by the Customer pursuant to this Agreement.

16.4. Adelaide EWP will not in any event be liable for any loss resulting from delays in providing Goods or Services which result from matters outside of Adelaide EWP's control or from delay which cannot be avoided without Adelaide EWP incurring undue expense.

17. GST and Stamp Duty

17.1. Where the registration of a Used Vehicle is transferred pursuant to this Agreement:

17.1.1. The Customer will arrange for the documents relating to the transfer to be stamped in accordance with the law;

17.1.2. The Customer will pay the whole amount of any Stamp Duty payable in respect of the transfer; and

17.1.3. The Customer will indemnify Adelaide EWP for any costs or expenses incurred by Adelaide EWP as a result of the Customer's failure to comply with clauses 17.1.1 or 17.1.2 herein including the cost of defending or settling any proceedings initiated against Adelaide EWP in respect of non-compliance with laws relating to payment of Stamp Duty or the stamping of instruments.

17.2. Where GST is payable in respect of a taxable supply made pursuant to this Agreement, the Customer will pay Adelaide EWP the amount of that GST.

18. Notices

18.1. Any notice required or authorised to be given or served upon a party pursuant to this Agreement shall be in writing and shall be delivered personally or sent by facsimile or email transmission (confirmed by subsequent personal delivery), or post to the relevant party.

18.2. A notice given or served in accordance with sub-clause (a) shall be deemed to have been received:

18.2.1. In the case of a notice delivered personally, at the time of delivery;

18.2.2. In the case of a notice sent by facsimile transmission, at the time of receipt or subsequent delivery, whichever is earlier; and

18.2.3. In the case of a notice sent by post to an address within Australia, on the third day following the day of posting.

18.3. Adelaide EWP's details for the purposes of giving notices are:

18.3.1. Postal Address: Adelaide EWP's premises;

18.3.2. Email: admin@ewp.com.au.

18.4. The Customer's details for the purposes of giving notices are those appearing on the Order. In addition:

18.4.1. if the Customer is a natural person, notice may be given by leaving the notice at or posting it to the primary residence of the Customer;

18.4.2. if the Customer is an incorporated body, by leaving the notice at or posting the notice to the registered office of the Customer.

19. Assignment

The Customer may not assign any of its rights under this Agreement except with the prior written consent of Adelaide EWP which consent may be withheld by Adelaide EWP without cause. Adelaide EWP may assign all of its rights under this Agreement from time to time and at any time.

20. Entire Agreement

The matters contained in the Order and these General Conditions of Sale constitute the entire agreement between the parties and no representations, warranties, guarantees or other terms or conditions, whether express or implied and whether oral or in writing in relation to the subject matter of the Agreement shall be of any force or effect unless contained in the Order and these General and Conditions of Sale.

21. Cumulative Remedies for Adelaide EWP

The provisions of this Agreement, and the rights and remedies of Adelaide EWP under this Agreement, are cumulative and are without prejudice and in addition to any rights or remedies Adelaide EWP may have at law or in equity; no exercise by Adelaide EWP of any one right or remedy under this Agreement, or at law or in equity, shall (save to the extent, if any, provided expressly in this Agreement or at law or in equity) operate so as to hinder or prevent the exercise by Adelaide EWP of any other such right or remedy.

22. Waiver

Failure by Adelaide EWP to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed to be a waiver thereof or of any rights Adelaide EWP may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

23. Variations

Variations to this Agreement are to be in writing signed by the Customer and Adelaide EWP.

24. Severability

It is agreed by Adelaide EWP and the Customer that if any provision of this Agreement is determined to be null and void, voidable by any party, unenforceable or illegal, it shall read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, offending words) shall be severed from the Agreement without thereby affecting the validity, legality or, enforceability of the remaining provisions (or parts of those provisions) of the Agreement which shall continue in full force and effect.

25. Paramountcy of these General Conditions of Sale

In the event of any inconsistency between the terms set out in these General Conditions of Sale and any term embodied in the Order or any other terms incorporated into this Agreement by reference or otherwise, the terms of these General Conditions of Sale prevail to the extent of any inconsistency.

26. Expert determination

If any dispute arises between the parties with respect to any matter within the expertise of a technical expert then such dispute shall at the instance of either party be referred to a person agreed between the parties, and, in default of agreement within twenty-one days of notice from either party to the other calling upon the other so to agree, to a person chosen on the application of either party by the President for the time being of the Institute of Engineers Australia. Such person shall be appointed to act as an expert and not as an arbitrator and the decision of such person shall be final and binding. The costs of such expert shall be borne equally by the parties unless such expert shall decide one party has acted unreasonably in which case he shall have discretion as to costs.

27. Force Majeure

Except for an obligation to pay money, neither party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from events or circumstances outside its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for more than 2 months either party may terminate this Agreement on 7 days' written notice to the other party.

28. Governing Law

This Contract shall be governed by and constructed in accordance with the laws of the State of South Australia and the Customer hereby submits to the non-exclusive jurisdiction of the Courts of that state and of all Courts which may hear appeals there from.

29. Further assurances

The parties will promptly do everything necessary or desirable, even if not expressly stated in this Agreement, to ensure that the terms of this Agreement are fully carried into effect.