

PUTZMEISTER OCEANIA Pty Ltd

Terms and Conditions of Sale and Delivery (last revised 04/2023)

1 Dictionary

In these Terms and Conditions, the words below have the following meanings:

Agreement means each Offer which is accepted by Putzmeister under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Melbourne, Victoria.

Confidential Information means all information and other content disclosed by Putzmeister to the Customer and includes these Terms, any Quote, the Specifications and the price of the Equipment or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than Putzmeister (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Customer means the entity or person who has agreed to be bound by these Terms and who requested that Equipment and / or Services be supplied to it by Putzmeister.

Customer Background Materials means all material provided by or on behalf of the Customer to Putzmeister for the purposes of an Agreement.

Customer Specifications has the meaning given to it in clause 17.1.

Delivery Fee means:

- (a) the delivery fee set out in a Quote or agreed in writing between the parties; or
- (b) if no delivery fee is set out in a Quote or agreed in writing between the parties, the costs incurred by Putzmeister in delivering the Equipment to the Customer.

Deposit means a portion of the price for the relevant Equipment, as set out in the Quote or Order

Equipment means the machines, equipment, spare parts and goods to be supplied by Putzmeister to the Customer under an Agreement.

Ex Works has the meaning given to it in the Incoterms 2020.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party.

Installation Fee means:

- (a) the engineering, commissioning and / or installation fees set out in a Quote or agreed in writing between the parties; or
- (b) if no such fee is set out in a Quote or agreed in writing between the parties, the costs incurred by Putzmeister in respect of the commissioning and installing of the Equipment (including costs of travel, accommodation and overtime).

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Offer has the meaning provided to it in clause 3.1.

Order means any written order or other request by or for the Customer to Putzmeister to supply to the Customer any Equipment or provide it with any Services (or both) and which may have been given in response to a Quote.

Packaging Fee means any fee set out in a Quote or agreed in writing between the parties for the provision by Putzmeister of pallets or other packaging.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Premises means 10-12 Kimpton Way, Altona, Victoria 3018 or such other premises as agreed by Putzmeister and the Customer.

Price List means any price list, catalogue, brochure or other document issued or published by Putzmeister which describes the Equipment or Services.

Purchase Price has the meaning provided to it in clause 5.1, as may be varied under clause 5.2.

Putzmeister means Putzmeister Oceania Pty Ltd (ACN 051 976 482).

Quotation or Quote means a quote or proposal, if any, provided by Putzmeister to the Customer in respect of the Equipment and / or Services.

Services means the services to be supplied by Putzmeister to the Customer under an Agreement.

Software means any software which is incorporated into, and forms part of, the Equipment and any documentation provided with or in respect of the Software.

Specifications means any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars (including details relating to consumption of operating materials and operating costs) of the Equipment or Services or photographs, drawings or illustrations of the Equipment which are supplied by Putzmeister or which may be available on the internet, including as provided in any Quote, Order, or Price List.

Tax or Taxes means any tax, levy, duty, charge, impost, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or

collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of those amounts.

Terms means these Terms and Conditions.

2 Application

These Terms apply to and govern the supply by Putzmeister of Equipment and provision of Services to the Customer which are to be provided under an Offer accepted by Putzmeister.

3 Formation of Agreement

3.1 The Customer acknowledges and agrees that by submitting an Order to Putzmeister the Customer makes an irrevocable offer to Putzmeister for Putzmeister to supply it with the Equipment and / or provide it with the Services on the terms of these Terms, the Order and the Quote (if any) (**Offer**).

3.2 A contract will be formed between Putzmeister and the Customer in respect of each Offer upon the earlier of Putzmeister:

- (a) notifying the Customer in writing that it accepts the Customer's Offer;
- (b) accepting, in full or part, payment from the Customer for any Equipment or Services the subject of the Offer;
- (c) making delivery of the Equipment the subject of the Offer to the Customer; or
- (d) performing the Services the subject of the Offer.

3.3 An Agreement formed under clause 3.2 will comprise these Terms, the Order (only to the extent that any additional terms in the Order are accepted by Putzmeister in writing) and the Quote (if any).

3.4 Putzmeister is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of Putzmeister.

3.5 Without limiting clause 5.11(b), Putzmeister may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where Putzmeister believes that it will be unable to supply the relevant Equipment or provide the Services to the Customer for any reason, provided that if Putzmeister cancels an Agreement under this clause 3.5 it will refund to the Customer any amounts already paid by the Customer for the Equipment or Services subject to the cancellation and which are not provided to the Customer. The refund of any amounts will be the Customer's sole remedy against Putzmeister in respect of any cancellation under this clause 3.5.

4 Deposit

4.1 Putzmeister may require that the Customer pay a Deposit to Putzmeister at the time of making the Offer.

4.2 The Deposit will not be refundable and Putzmeister will be entitled to keep the Deposit at the time it accepts the Offer.

5 Price and payment

5.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Equipment and / or Services under each Agreement will be:

- (a) the price for the Equipment and / or Services specified in the Quote or, if there is no Quote, the price specified in the Order or, if there is no price specified in the Order, the price specified in most recent Price List issued at the time the Offer is made; plus
- (b) if Putzmeister is required to deliver the Equipment, the Delivery Fee; plus
- (c) any Packaging Fee; plus
- (d) if Putzmeister is required to carry out any works in relation to the Equipment or commissioning and installation of the Equipment, the Installation Fee,

(**Purchase Price**).

5.2 If, between acceptance of an Offer by Putzmeister and delivery of the Equipment and / or Services the subject of the Offer, the cost incurred by Putzmeister to manufacture, supply and / or procure the relevant Equipment and / or Services increases (**Cost Increase**) then, subject to clauses 5.3 and 5.4, Putzmeister may increase the Purchase Price by notice in writing to the Customer by an amount which is no greater than the Cost Increase.

5.3 Prior to providing a notice to the Customer under clause 5.2, Putzmeister must use best endeavours to discuss the proposed increase to the Purchase Price with the Customer.

5.4 The Purchase Price may not increase under clause 5.2 by more than 10%.

5.5 Subject to clause 6, unless otherwise expressly specified by Putzmeister or in these Terms, all prices stated are stated exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Equipment and / or Services and must immediately upon request by Putzmeister provide Putzmeister with evidence of payment of any Taxes.

5.6 Putzmeister may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement in respect of the Equipment and at any time after provision of the Services in respect of the Services.

5.7 Putzmeister may set off any amount owing by the Customer to Putzmeister, whether or not due for payment, against any money due for payment by Putzmeister to the Customer under any agreement, understanding or arrangement between Putzmeister and the Customer.

5.8 Subject to clauses 5.9, 5.10 and 7.7, unless otherwise agreed in writing between the Customer and Putzmeister the due date for payment by the Customer to Putzmeister of the Purchase Price for the Equipment and / or Services supplied pursuant to an Agreement (**Due Date**) is on the day prior to the date scheduled by Putzmeister for the delivery or provision of the Equipment or Services to the Customer.

5.9 The Customer must pay the Purchase Price on demand by Putzmeister if the creditworthiness of the Customer is or becomes unsatisfactory in Putzmeister's sole opinion.

5.10 If:

- (a) the Customer has previously failed to make any payment to Putzmeister by the due date for that payment (whether under these Terms or otherwise); or
- (b) the creditworthiness of the Customer is, in Putzmeister's sole opinion, unsatisfactory,

Putzmeister may require payment of the Purchase Price in full prior to Putzmeister delivering the relevant Equipment or providing the Services.

5.11 If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to Putzmeister and to the extent permitted by law, Putzmeister may, in its sole discretion, elect to do any one or more of the following:

- (a) suspend any further deliveries of goods or equipment or provision of services to the Customer arising from any Agreement;
- (b) cancel any Agreement in respect of any Equipment or Services not yet supplied or provided to the Customer in whole or in part by Putzmeister;
- (c) exercise any right to terminate any Agreement in accordance with clause 23.1;
- (d) enter the property of the Customer in order to repossess the Equipment and the Customer grants Putzmeister and its agents an irrevocable licence to do so;
- (e) dismantle any other goods into which the Equipment has been installed or incorporated and remove the Equipment from those goods;
- (f) charge the Customer interest (both before and after any judgement) on the unpaid amount at the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic), which interest will accrue and be chargeable from the first day on which an amount becomes overdue until Putzmeister receives payment of all amounts (including all interest) by way of cleared funds;
- (g) cancel or reverse any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement; and
- (h) exercise any rights which Putzmeister may have under law, including the *Personal Property Securities Act 2009* (Cth).

5.12 The Customer may not set off or combine any amount owing by Putzmeister to the Customer, whether or not due for payment, against any money due for payment by the Customer to Putzmeister under an Agreement and the Customer must pay, and not withhold, any amount due to Putzmeister under an Agreement notwithstanding the Customer may be in dispute with Putzmeister

regarding the Equipment or Services supplied by Putzmeister to the Customer.

6 GST

In this clause, words and expressions which are defined in the *A New Tax System (Equipment and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act. Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Putzmeister under these Terms, the Customer must pay to Putzmeister, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify Putzmeister for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Putzmeister will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Putzmeister in respect of the reimbursement or payment.

7 Delivery of Equipment and provision of Services

- 7.1 Unless otherwise agreed in writing, Putzmeister will deliver the Equipment to the Customer on an Ex Works basis from the Premises.
- 7.2 Without limiting clause 7.1, the Customer is responsible for collecting the Equipment from the Premises and must collect the Equipment within three Business Days of being notified by Putzmeister that the Equipment is ready to be collected.
- 7.3 Putzmeister will endeavour, but is not obliged, to make the Equipment available for collection and provide the Services between the hours of 9.00 am and 5.00 pm on a Business Day at the Premises or place of service provision.
- 7.4 The Customer will be responsible, at its own cost, for the loading and unloading of any Equipment at the Premises and the premises to which the Equipment is finally delivered.
- 7.5 The Customer acknowledges that, after the time the Customer makes the Offer, Equipment which is subject to an Offer may be modified by Putzmeister as a result of an improvement in technology or because of a requirement imposed by law.
- 7.6 In the event of the Customer failing to accept any delivery of the Equipment (including failure to collect the Equipment), Putzmeister will be entitled to:
- (a) payment of compensation in accordance with clause 25;
 - (b) treat the obligation to supply the remainder of the Equipment (if any) as cancelled by the Customer; and
 - (c) at the risk and cost of the Customer and without limiting any other rights Putzmeister may have, store and maintain any Equipment which the Customer refuses to take delivery of or fails to collect.
- 7.7 In the event that the date of delivery is delayed or extended at the request of the Customer Putzmeister will be entitled to:
- (a) payment of the Purchase Price on the basis that delivery occurred on the original proposed delivery date; and
 - (b) in addition to the Purchase Price, charge the Customer either the cost incurred by Putzmeister in storing and maintaining the Equipment during the extended period or an amount equal to 0.5% of the Purchase Price for each month (or part month) that the delivery date is extended.
- 7.8 Putzmeister will use its reasonable endeavours to deliver the Equipment and provide the Services on any date or during any delivery period specified or estimated by Putzmeister or set out in a Quote or Order, however the Customer acknowledges that these dates and delivery periods are estimates only and may be delayed if there is a Force Majeure Event or the Customer is in breach of the Agreement.
- 7.9 Without limiting clause 7.8 and subject to clauses 13.1 and 13.2, Putzmeister may deliver or provide a portion of the Equipment or Services and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Equipment or to pay for the Equipment or Services because only a portion of the quantity ordered was delivered or provided and the Customer agrees that Putzmeister will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.

- 7.10 If there are multiple Agreements in place at any one time, then Putzmeister may, in its absolute discretion, determine in which order it satisfies the delivery of the Equipment and provision of Services under the Agreements.

8 Defective Equipment

- 8.1 The terms of this clause 8 are subject to clause 13 and, if any Equipment is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 8.
- 8.2 The Customer must:
- (a) prior to taking possession of the Equipment and prior to any commissioning or installation of the Equipment, inspect the Equipment; and
 - (b) after commissioning of the Equipment is complete, continuously monitor the Equipment and use of the Equipment,
- and immediately notify Putzmeister in writing if the Equipment is not fit for purpose (having particular regard to any concerns regarding the safety of the Equipment and use of the Equipment), has any defect or otherwise does not meet any Specifications.
- 8.3 The Customer must:
- (a) immediately cease using the Equipment if it has any concerns or reservations about the safety of the Equipment;
 - (b) immediately notify Putzmeister of the concerns or reservations the Customer has with the safety of the Equipment; and
 - (c) allow Putzmeister access to the Equipment to allow Putzmeister or its authorised representative to inspect the Equipment and carry out any repairs to the Equipment which Putzmeister considers necessary.
- 8.4 If the Customer gives Putzmeister a written notice under clauses 8.2 or 8.3, the provision to the Customer of any refund or other remedy (such as repairing a defect or replacing all or part of any Equipment) in respect of the Equipment the subject of the notice and which is determined by Putzmeister to be defective or not meet the Specifications will be at Putzmeister's sole discretion.
- 8.5 Without limiting the requirements to provide notice under clauses 8.2 and 8.3, any claim made by the Customer in respect of any defect in the Equipment or non-compliance with the Specifications must be made and notified to Putzmeister within the later of 12 months of delivery of the Equipment and, if Putzmeister installs the Equipment, installation of the Equipment.
- 8.6 The Customer must not, without the prior written approval of Putzmeister, undertake itself or engage any third party to undertake any repair or other work in order to remedy any defect in the Equipment or non compliance with any Specifications.
- 8.7 Subject to clause 13 and any applicable provisions of the Australian Consumer Law, Putzmeister shall not be liable for any defect or damage to the Equipment which is caused by unsuitable or improper use of the Equipment, defective installation or commissioning undertaken by a person other than Putzmeister or an authorised contractor of Putzmeister, the acts or omissions of the Customer or any person (other than Putzmeister or an authorised contractor of Putzmeister), natural wear and tear, defective or negligent handling, improper maintenance, excessive load, unsuitable operating materials and replacement materials, poor work, unsuitable foundation, chemical, electrotechnical / electronic or electric influences.
- 8.8 Subject always to any applicable provisions of the Australian Consumer Law, the Customer may only return the Equipment to Putzmeister with the prior written consent of Putzmeister and Putzmeister will be under no obligation to accept Equipment returned to it or provide any refund or other remedy in respect of any Equipment returned.
- ## **9 Customer's Use and Obligations**
- The Customer must, at its own cost and expense:
- 9.1 be responsible for all costs or expenses necessary to operate the Equipment;
 - 9.2 only use the Equipment for any purpose and capacity for which it has been specifically designed and not use the Equipment for any other or illegal purpose;
 - 9.3 ensure that the Equipment is used only by persons who are suitably trained and qualified to use the Equipment;

- 9.4 operate the Equipment in accordance with its intended use and in accordance with any manuals, instructions and directions provided to the Customer by Putzmeister;
- 9.5 operate the Equipment in accordance with all applicable laws and regulations (including any health and safety laws) and in accordance with any safety and operational information supplied with the Equipment;
- 9.6 obtain and maintain any authorisations or permits required by law or regulation to use the Equipment (including any registration or licence);
- 9.7 not alter, adapt, modify, translate, make improvements to, reverse engineer, de-compile, disassemble, copy or tamper with any part of the hardware that accompanies or is part of the Equipment; and
- 9.8 without limiting clause 9.7, not alter, adapt, modify, translate, make improvements to, create derivative works based upon, disassemble, decompile, reverse engineer, reduce to any human or machine perceivable form, or circumvent any technological measure that controls access to or permits derivation of the source code of, the Software or any part thereof.
- 10 Title and risk of Equipment**
- 10.1 Title to, and property in any Equipment supplied under an Agreement remain with Putzmeister and will only pass to the Customer once all moneys owing by the Customer to Putzmeister in respect of the Agreement or any other agreement or arrangement between the Customer and Putzmeister have been paid in full.
- 10.2 In the event that Putzmeister is required to replace any Equipment or any part of the Equipment (**Replaced Equipment**), title to and property in the Replaced Equipment passes to Putzmeister upon Putzmeister taking possession of the Replaced Equipment.
- 10.3 Risk in the Equipment passes to the Customer upon the earlier of:
- (a) the Equipment being removed from the Premises (or that of Putzmeister's supplier or agent) for delivery to the Customer or collection by the Customer from the Premises;
 - (b) if the Equipment is to be delivered to the Customer and there is a delay in delivery which is not caused by Putzmeister or is due to circumstances outside of Putzmeister's reasonable control, on the date which Putzmeister notified the Customer that the Equipment would be ready to be delivered; and
 - (c) if the Equipment is to be collected by the Customer, on the date which is three Business Days after the date on which Putzmeister notified the Customer that the Equipment is ready to be collected.
- 10.4 Unless otherwise agreed in writing by Putzmeister, the Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Equipment from the time risk passes to the Customer under this clause and Putzmeister is not obliged to give the Customer a notice referred to in section 35(3) of the *Sale of Equipment Act 1923* (NSW) (or any equivalent legislation).
- 10.5 The Customer indemnifies Putzmeister against any Loss or damage to the Equipment, however caused, occurring:
- (a) after risk in the Equipment passes to the Customer in accordance with clause 10.3; and
 - (b) before risk in the Equipment passes to the Customer in accordance with clause 10.3 as a result of the Customer's negligence.
- 10.6 In the event that the Customer is required to return any Equipment to Putzmeister, risk in the Equipment passes to Putzmeister on confirmation of receipt of the Equipment by Putzmeister.
- 10.7 Until full title, property and ownership of the Equipment passes to the Customer in accordance with clause 10.1, and while the Equipment remains in the Customer's full control and possession:
- (a) the Customer must hold the Equipment as Putzmeister's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Equipment in any way without Putzmeister's prior written consent;
 - (b) the Customer must keep and maintain the Equipment in good and substantial repair and condition;
 - (c) the Customer must insure the Equipment for its full replacement value (which must not be less than the Purchase Price) and must store the relevant Equipment separately from any other equipment, machinery or goods and in a way that enables the Equipment to be clearly identified as Putzmeister's and referable to a particular invoice;
- (d) Putzmeister may enter the premises of the Customer or any third party where the Equipment is stored during the hours of 9.00 am to 5.00 pm to inspect the Equipment and to carry out any required maintenance or repair work on the Equipment;
 - (e) Putzmeister may at any time after payment is overdue require the Customer to deliver up the Equipment to Putzmeister and, if the Customer fails to deliver up the Equipment immediately, Putzmeister may enter the premises of the Customer or any third party where the Equipment is stored and repossess it;
 - (f) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Equipment; and
 - (g) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Equipment.
- 10.8 For the purposes of Putzmeister exercising its rights under clauses 10.7(d), 10.7(e) and 23.2(c) or complying with any of its obligations under an Agreement, the Customer:
- (a) expressly authorises and grants Putzmeister and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party; and
 - (b) the Customer indemnifies Putzmeister against any Loss that may be incurred or sustained by Putzmeister, its employees or agents, as a result of the entry of those premises where the Equipment is stored.
- 10.9 In the event that the Equipment (or any portion of the Equipment) is processed, incorporated, transformed or installed into any other goods, buildings or land then the Customer must:
- (a) keep and maintain records in relation to the Equipment which has been processed, incorporated, transformed or installed and the goods, buildings or land in which the Equipment has been processed, incorporated, transformed or installed; and
 - (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for those goods, buildings or land on trust for Putzmeister and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Equipment processed, incorporated, transformed or installed.
- 10.10 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by Putzmeister, the Customer acknowledges that any sale or purported sale of the Equipment will not be in the ordinary course of the Customer's business and the proceeds of any Equipment sold in those circumstances will, to the extent of any money owing by the Customer to Putzmeister, be held on trust for Putzmeister by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
- 11 PPSA**
- 11.1 Words and expressions used in this clause 11 which are not defined in these Terms but are defined in the PPSA have the meaning given to them in the PPSA.
- 11.2 Unless a Customer has paid for Equipment in respect of an Agreement before they are delivered to the Customer, the Customer acknowledges that:
- (a) the Agreement for the supply of Equipment created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants Putzmeister a security interest in the Equipment and over any amount owed to the Customer in respect of the Equipment (**Account**) to secure all monies owing by the Customer to Putzmeister from time to time;
 - (b) where Putzmeister has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - (c) Putzmeister is not obliged to act in any way to dispose of or to retain any Equipment which has been seized by Putzmeister or any person nominated by Putzmeister under its rights under the PPSA.
- 11.3 Without limiting anything else in these Terms, the Customer consents to Putzmeister effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by an Agreement or these Terms, including

in relation to the Equipment and any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, Putzmeister's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.

11.4 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Putzmeister for that purpose in relation to the Equipment or the Account). Without limiting the foregoing, the Customer must:

- (a) register a security interest in relation to the Equipment where the Customer on sells the Equipment to a third party or incorporates the Equipment into another good or product;
- (b) where appropriate, take reasonable steps to identify security interests in relation to the Equipment in the Customer's favour and to perfect and protect them, with the highest priority reasonably available; and
- (c) not register a financing change statement in relation to any registration made under paragraphs (a) or (b) without Putzmeister's prior written consent.

11.5 The Customer must indemnify, and on demand reimburse, Putzmeister for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of Putzmeister's security interests.

11.6 The Customer must not change its name, address or contact details without providing prior written notice to Putzmeister.

11.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.

11.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Putzmeister has given prior written consent.

12 Software

12.1 The parties agree that the Software is incorporated into, and forms part of, the Equipment and the Customer is granted a licence to use the Software under clause 12.2.

12.2 Putzmeister grants to the Customer a non-exclusive, royalty free licence to use all Intellectual Property Rights in the Software solely for the purpose of enabling the Customer to use the Equipment in accordance with this Agreement. The Customer must not transfer, assign or sub-licence the licence granted under this clause 12.2.

12.3 The Customer acknowledges that nothing in the Agreement imposes obligations on Putzmeister to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of all or any part of the Software (**Updates**), provided however that if Putzmeister does develop or release any Updates, it may require that all such Updates be used by the Customer.

13 Liability

13.1 If the Customer is a Consumer and Putzmeister supplies PDH Goods or Services to the Customer, Putzmeister acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they apply to the PDH Goods or Services supplied by Putzmeister and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.

13.2 If the Customer is a Consumer and any goods or services supplied by Putzmeister to the Customer are non PDH Goods or Services, Putzmeister's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at Putzmeister's discretion) to:

- (a) in the case of Equipment:
 - (i) the replacement of the Equipment or the supply of equivalent equipment or goods;
 - (ii) the repair of the Equipment;

(iii) the payment of the cost of replacing the Equipment or of acquiring equivalent equipment or goods; or

(iv) the payment of the cost of having the Equipment repaired; and

(b) in the case of Services:

(i) the supplying the Services again; or

(ii) the payment of the cost of having the Services supplied again.

13.3 Subject to clause 13.4, if the Customer makes a claim against Putzmeister which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Putzmeister's total aggregate liability arising in connection with all such claims shall be limited to an amount equal to 15% of the Purchase Price.

13.4 Without limiting and subject to clauses 13.1 and 13.2, Putzmeister shall not be liable to the Customer for any Consequential Loss.

13.5 In relation to the supply of Equipment which are non PDH Goods or Services, if Putzmeister is liable to indemnify the Customer under section 274 of the Australian Consumer Law, Putzmeister's liability to the Customer is limited to an amount equal to the lower of:

- (a) the cost of replacing the Equipment;
- (b) the cost of obtaining equivalent Equipment; or
- (c) the cost of having the Equipment repaired.

13.6 The Customer acknowledges that:

- (a) the Customer may agree that Equipment supplied to the Customer under these Terms may be supplied as second hand Equipment; and
- (b) where second hand Equipment is supplied to the Customer under these Terms that Equipment may have issues or defects which affect their state and condition and the Equipment is unlikely to be in the same state and condition as if it were new Equipment.

13.7 The Customer acknowledges that the Customer may not have rights under the Australian Consumer Law against the Company for a claim that the Equipment (including second hand Equipment) is not of acceptable quality, or such rights may be diminished, where:

- (a) the reason or reasons for the Equipment not been of acceptable quality are specifically drawn to the Customer's attention before making an Offer; or
- (b) when the Customer examined the Equipment prior to taking possession, the examination revealed, or ought reasonably to have revealed, that the Equipment was not of acceptable quality.

14 Notification of claims

The Customer must notify Putzmeister immediately if it becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness,

in respect of, or caused by, the Equipment and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

15 Intellectual Property

15.1 The parties acknowledge and agree that as between Putzmeister and the Customer all Intellectual Property Rights in the Equipment, Software, Specifications and any material created as part of the Services vests in and exclusively belongs to and are irrevocably assigned to Putzmeister and the Customer agrees that it must not infringe or use the Intellectual Property Rights of Putzmeister which exist in the Equipment, Software, Specifications or materials created as part of the Services without the prior written consent of Putzmeister.

15.2 Putzmeister grants to the Customer a non-exclusive, royalty free licence to use all Intellectual Property Rights in the Equipment and Specifications solely for the purpose of enabling the Customer to use the Equipment in accordance with the relevant Agreement.

15.3 The Customer grants to Putzmeister a non-exclusive, royalty free licence to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background Materials which are required to enable Putzmeister to supply the Equipment or perform the Services.

15.4 The Customer must not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Equipment without the prior written consent of Putzmeister.

15.5 The Customer must not remove, deface, change, distort, delete or cover up:

- (a) any name plate or mark on the Equipment or Software which indicates that Putzmeister is the owner of the Equipment or Software; or
- (b) any patent, copyright or other proprietary notices which appear in writing on or in any part of the Equipment or Software.

15.6 The Customer must not make available for purchase, sell or promote any:

- (a) good which is a copy or imitation, in whole or in part, of any Equipment; or
- (b) Equipment which has been modified or varied.

16 Indemnity

The Customer indemnifies Putzmeister and holds Putzmeister harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which Putzmeister incurs as a direct or indirect result of:

- (a) recovering any amounts the Customer owes to Putzmeister (including any fees or commission paid to a debt collector, mercantile agent or similar);
- (b) any breach of an Agreement by the Customer;
- (c) the use of, or reliance on, any Customer Specifications;
- (d) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any of the Customer Background Materials or Customer Specifications (including any termination of an Agreement under clause 23.1(e));
- (e) any of the information or data provided, or required to be provided, to Putzmeister under clause 18.1 not being provided or not being provided by the time set out in clause 18.1 or being wrong, incorrect, misleading, outdated or otherwise defective; and
- (f) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.

17 Specifications

17.1 If an Offer has been accepted by Putzmeister, the Customer acknowledges that the Offer was accepted by Putzmeister on the basis of, and in reliance upon, any information, drawings, specifications, data, representations, statements and documents provided by the Customer, set out in an Order or otherwise approved by the Customer (**Customer Specifications**).

17.2 Where any instructions, materials or information in whatever form (including any Customer Specifications) are required to be provided by the Customer to Putzmeister before Putzmeister can proceed with or complete the provision of the Equipment or Services, those instructions, materials or information must be supplied by the Customer to Putzmeister within a reasonable time so as to enable Putzmeister to deliver the Equipment or Services within any agreed time frame.

17.3 The Specifications are approximate only and Putzmeister makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.

17.4 Putzmeister may make changes to the specifications, dimensions, weights or other particulars of the Equipment as may be required from time to time by law or any safety or manufacturing requirements.

18 Export Controls

18.1 As soon as possible but not later than four weeks before the scheduled date of delivery and otherwise upon request by Putzmeister, the Customer must notify Putzmeister in writing of all information and data required by Putzmeister in order to comply with any law (including any applicable foreign trade law) and to obtain any necessary licences, permits, authorisations or approvals which Putzmeister has agreed to procure or be responsible for.

18.2 The Customer must immediately notify Putzmeister if any of the information or data provided to Putzmeister under clause 18.1 is

wrong or becomes incorrect, misleading, outdated or otherwise defective.

19 Compliance

The Customer must, and must ensure that its partners, officers, employees, agents and other representatives, comply with legal regulations and in particular shall act preventatively against any kind of criminal or reprehensible misconduct in the course of its business operations.

20 Prohibited Dealings

The Customer must, and must ensure that it and its partners, officers, employees, agents and other representatives do not do any of the following in respect of the Equipment and any other goods supplied by Putzmeister:

- (a) deal with persons, organisations or institutions that are named on a sanctions list;
- (b) deal with customers in countries under embargo or which are otherwise prohibited;
- (c) engage in any dealings for which any required licence is not held, obtained or present; and
- (d) engage in any dealings that may have a connection with nuclear, biological or chemical weapons or a military end-use,

and if the Customer is in breach of this clause then Putzmeister may immediately terminate this Agreement.

21 Confidentiality

21.1 The Customer:

- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) have a need to know the Confidential Information (and only to the extent that each has a need to know); (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Putzmeister.

21.2 The Customer must notify Putzmeister immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

22 Force Majeure

22.1 Putzmeister will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.

22.2 If a Force Majeure Event under clause 22.1 exceeds 20 Business Days, Putzmeister may immediately terminate the Agreement by written notice to the Customer.

23 Termination

23.1 Without limiting Putzmeister's other rights under these Terms, and to the extent permitted by law, Putzmeister may terminate an Agreement with immediate effect by written notice to the Customer if:

- (a) the Customer fails to make any payment under the Agreement to Putzmeister by the due date for that payment;
- (b) the Customer is the subject of an Insolvency Event;
- (c) the Customer has breached any material term of the relevant Agreement which is not capable of remedy;
- (d) the Customer has breached a term of the relevant Agreement which is capable of remedy and has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- (e) the Customer Background Materials or Customer Specifications infringe the Intellectual Property Rights owned by a third party; or
- (f) in accordance with clause 22.2.

23.2 On termination of an Agreement:

- (a) the Customer must not sell or part with possession (other than as required under clause 23.2(b)) any Equipment the subject of the Agreement (other than any Equipment which have been paid for);

- (b) the Customer must, at its cost, immediately return to Putzmeister all Equipment the subject of the Agreement (other than any Equipment which have been paid for);
- (c) Putzmeister may enter the premises of the Customer or any third party to repossess any Equipment not returned under clause 23.2(b); and
- (d) all money owed by the Customer to Putzmeister will become immediately due and payable.

23.3 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

24 Cancellation or Exchange

The Customer must not, without the prior written agreement of Putzmeister:

- (a) cancel any Offer that has been submitted by the Customer; or
- (b) seek to exchange the Equipment for any other equipment or goods.

25 Liquidated Damages

25.1 If an Agreement is terminated prior to the Customer taking delivery of the Equipment then, without limiting Putzmeister's rights to claim additional damages, the Customer will be liable to pay to Putzmeister the following amounts:

- (a) if the Equipment is not manufactured to take into account any Customer Specifications, an amount equal to 25% of the Purchase Price; and
- (b) if the Equipment is manufactured to take into account any Customer Specifications an amount equal to 75% of the Purchase Price,

(Liquidated Damages).

25.2 Liquidated Damages become due immediately upon the issue of a notice by Putzmeister setting out the amount of Liquidated Damages payable by the Customer to Putzmeister.

25.3 If it is determined by a court of competent jurisdiction that Customer's liability for Liquidated Damages is deemed to be or becomes void, voidable or unenforceable in any way so as to disentitle Putzmeister from claiming Liquidated Damages, then Putzmeister is entitled to claim against the Customer damages at law as an alternative to Liquidated Damages.

25.4 The Customer acknowledges and agrees that the Liquidated Damages payable under this clause 25 are a genuine pre-estimate of some of the Loss that will be suffered by Putzmeister if an Agreement is terminated prior to the Customer taking delivery of the Equipment.

26 Acknowledgements and representations

26.1 By making an Offer, the Customer warrants and represents to Putzmeister that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.

26.2 The Customer acknowledges and agrees that any Price List does not constitute an offer by Putzmeister to supply Equipment appearing in that Price List and that Price Lists may be changed by Putzmeister at any time without notice.

27 Inconsistency

27.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence will apply to the extent of the inconsistency:

- (a) the prices and quantity of Equipment and / or Services set out in a Quote (if any);
- (b) these Terms;
- (c) any other terms of the Quote (if applicable); and
- (d) without limiting clause 27.2, any terms in the Order which are accepted by Putzmeister in writing.

27.2 These Terms will prevail over any Customer terms and conditions, except to the extent specifically agreed by Putzmeister in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Putzmeister if expressly agreed by Putzmeister in writing.

28 Miscellaneous

28.1 In these Terms:

- (a) the singular includes the plural and vice versa;

(b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;

(c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;

(d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;

(e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;

(f) headings are inserted for convenience and do not affect the interpretation of these Terms;

(g) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and

(h) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

28.2 The Customer must maintain and keep current and complete records of the Equipment (in sufficient detail so as to be readily identified as goods supplied by Putzmeister) and must, immediately upon written request from Putzmeister, provide Putzmeister with access to, or copies of, those records.

28.3 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without Putzmeister's prior written consent. Putzmeister may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time in circumstances where the assignment will not adversely affect the rights of the Customer.

28.4 Putzmeister may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as Putzmeister provides the Customer notice of the variation (**Variation Date**). Unless the parties otherwise agree in writing, any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.

28.5 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.

28.6 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

28.7 The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 5.5, 5.11, 6, 8, 10, 11, 13, 14, 15, 16, 20, 21, 23, 25, 27 and 28.

28.8 Each party must:

- (a) do all acts necessary or desirable to give full effect to an Agreement; and
- (b) refrain from doing anything which might prevent full effect being given to an Agreement.

28.9 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or (except as expressly provided for) gives rise to any other form of fiduciary relationship between the parties.

28.10 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in any part of the Agreement. Notices will be deemed to have been received:

by hand upon delivery; by post within six Business Days of sending; and by email one hour after the email is sent (unless the sender knows that email has failed to send).

28.11 These Terms are governed by the laws in force in Victoria, Australia, and the Customer and Putzmeister submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and the Federal Court of Australia (Victorian registry).

28.12 The *United Nations Convention on Contracts for the International Sale of Equipment (1980)* (**The Vienna Convention**) and any acts or regulations enacting The Vienna Convention will not apply to these Terms or any Agreement and are excluded.

Putzmeister Oceania Pty Ltd

10-12 Kimpton Way
Altona VIC 3028 AUSTRALIA
Tel. +61 3 9931 4200
oceania@putzmeister.com
www.putzmeister.com

