

1 Definitions and Interpretation

- 1.1 **"Act of God"** means any act of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or a telecommunications service and any other similar act which is beyond the reasonable control of a party, but does not include an obligation to pay money.
- 1.2 **"Agreement"** means this agreement between the Seller and the Buyer and includes these terms and the Order Form.
- 1.3 **"Application for Credit"** means an application for a credit account submitted by the Buyer to the Seller.
- 1.4 **"Business Day"** means Monday to Friday except public holidays in Victoria, Australia.
- 1.5 **"Buyer"** means the person so identified on the Order Form or Quotation and/or any other person who orders or purchases any Goods and/or Services from the Seller.
- 1.6 **"Goods"** means the goods supplied by the Seller to the Buyer, including as a result of the Services.
- 1.7 **"Guarantor"** means the person (or persons) who agree to be liable for debts and the obligations of the Buyer as guarantor.
- 1.8 **"Intellectual Property Rights"** means all intellectual property rights of any kind whatsoever throughout the world including all rights which subsist in copyright, patents, trade marks, design, circuit layouts and plant breeders rights irrespective of whether such rights are registered or capable of being registered.
- 1.9 **"Order"** means any order placed by the Buyer with the Seller for the Goods and/or Services which are described in the Order Form, Quotation or otherwise agreed between the parties.
- 1.10 **"Order Form"** means an order form or other document which describes the Goods and/or Services to be supplied by the Seller.
- 1.11 **"Price"** means the price of the Goods and/or Services as agreed between the Seller and the Buyer subject to clause 4 of this Agreement.
- 1.12 **"Quotation"** means a quote provided by the Seller to the Buyer in respect of the supply of certain Goods and/or Services.
- 1.13 **"Seller"** means The Shotton Group Pty Ltd (ACN 005 550 747) trading as each or all of the following: P & R Sheetmetal, Shotton Lifts Australia, Parmed, Shotton Workplace Solutions and its successors and assigns.
- 1.14 **"Services"** means all services supplied by the Seller to the Buyer including, without limitation, any advice, recommendations, design, creation of drawings and sketches, or the creation of the Goods as requested by the Buyer.
- 1.15 In the interpretation of this Agreement unless the contrary intention appears:
- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the words "includes" or "including" will not limit whatever follows;
- (c) a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders;
- (d) a reference to any legislation includes a reference to any modification or re-enactment; and
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- ## 2 Acceptance
- 2.1 Without limiting the way in which the Buyer may become bound by this Agreement, the Buyer will become bound by this Agreement by: (a) placing an Order with the Seller for the supply of Goods and/or Services; (b) the Buyer signing a copy of the Order Form; or (c) the Buyer accepting the Goods supplied by the Seller.
- 2.2 Where more than one Buyer has entered into this Agreement, the Buyers shall be jointly and severally liable for their obligations under this Agreement.
- 2.3 The Buyer undertakes to give the Seller not less than fourteen (14) days advance written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details

(including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

3 Order

- 3.1 The Goods and/or Services to be supplied by the Seller are as described in the Order Form or Quotation.
- 3.2 The Seller is not obligated to supply to the Buyer any Goods and/or Services Ordered by the Buyer until the Seller communicates its acceptance of the Order to the Buyer.
- 3.3 Where the Services involve the design and manufacture or production of Goods for the Buyer, the Seller may in its sole discretion determine not to proceed with manufacture or production until such time as the Buyer has approved the design of the Goods in writing.
- 3.4 The Seller may in its sole discretion refuse to accept any Order and/or to supply part or all of any Order.

4 Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on the Order Form or any invoices provided by the Seller to the Buyer in relation to the Order; or
- (b) subject to clause 4.2, the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Quotation within thirty (30) days.
- 4.2 The Seller may by written notice to the Buyer at any time prior to delivery increase the Price of the Goods and/or Services to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, changes to the Goods and/or Services requested by the Buyer, delays caused by the Buyer, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The Buyer will have 3 Business Days from the receipt of such notice to cancel the Order by written notice to the Seller in which case the Buyer will pay the Seller a pro-rata portion of the Price representing work done to the date of cancellation. If the Buyer fails to provide such cancellation notice then the Buyer is deemed to have accepted the Price increase.
- 4.3 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the Order Form, invoice, Quotation or in any other forms. If any credit is granted by the Seller then payment will be as specified in the terms of the Application for Credit. If no time is stated then payment shall be on delivery of the Goods and/or Services, and in the case of delivery of Goods and/or Services in instalments, payment will be due on completion of each instalment. If any of the foregoing may impose more than one due date for a payment on the Buyer, then the earliest due date will prevail.
- 4.4 The Seller may in its sole discretion withhold delivery of the Goods and/or Services until the Buyer has paid for them, in which event payment shall be due before the delivery date.
- 4.5 At the Seller's sole discretion, payment may be due at the date of this Agreement.
- 4.6 Payment will be made by cash, cheque, bank cheque, E.F.T, or credit card (subject to any applicable credit card surcharge as specified by the Seller from time to time) or by any other method as agreed to between the Buyer and the Seller.
- 4.7 Unless specified to the contrary on any quote, invoice or Order Form, the Price shall be deemed to be exclusive of any GST and any other taxes, duties, levies, withholdings, government ordinances and related fines, penalties or interest payable by the Seller in respect of the supply of the Goods and/or Services ("**Taxes**"). The Buyer will indemnify the Seller in respect of such Taxes and will at the same time as paying the Price to the Seller, pay the Seller the amount of such Taxes.
- ## 5 Delivery Of Goods/Services
- 5.1 Delivery of the Goods shall be made to the Buyer's address as indicated by the Buyer to Seller at the time of placing the Order. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer fails to make such arrangements then, at the Seller's discretion, delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Buyer or, failing such naming, to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

- 5.3 The Seller may deliver the Goods and/or Services by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Agreement.
- 5.4 Delivery of the Goods and/or Services to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this Agreement.
- 5.5 The Buyer shall be responsible for insuring the Goods whilst they are in transit from the Seller to the Buyer until the time that the Seller delivers the Goods to the Buyer and the Buyer has paid the Price to the Seller.
- 5.6 The failure or delay of the Seller to deliver the Goods and/or Services shall not entitle either party to treat this Agreement as repudiated or breached by the Seller.
- 5.7 The Seller shall not be liable for any loss or damage whatsoever due to any failure or delay by the Seller to deliver the Goods and/or Services (or any of them) promptly, by any particular due date, or at all.
- 5.8 Delivery and provision of any Services will take place on dates and times separately agreed between the parties.
- 6 Risk**
- 6.1 All risk for the Goods passes to the Buyer on delivery as determined under clause 5.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer (as determined under clause 12), the Seller is entitled, without prejudice to any of its other rights or remedies under this Agreement (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under this Agreement. The production of this Agreement by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 7 Liability and representations**
- 7.1 The Buyer acknowledges that it has undertaken its own inspections and made its own independent enquiries in reaching its decision to purchase the Goods and/or Services.
- 7.2 The Buyer agrees that it will not make any representations about the Goods, Services or the Seller to the Buyer's customers or any other third party without obtaining the prior written consent of the Seller.
- 7.3 Where the Services involve the provision of advice, recommendations, design work, drawings, sketches or information, the Buyer acknowledges that it is responsible for making its own enquiries and to review all such Services as provided by the Seller to determine whether such Services are suitable for the requirements of the Buyer.
- 7.4 Where the Goods are designed to a specification, sketch or other design provided by the Buyer then the Buyer acknowledges that the Seller will have no responsibility for the accuracy or suitability of the specification, sketch or design or for the functionality and performance of the Goods which are produced in accordance with or substantially in accordance with that specification, sketch or design.
- 7.5 The Buyer acknowledges that the Seller has not made and will not make any express or implied warranties in relation to the Goods and/or Services provided under this Agreement. Subject to clauses 7.8 and 7.9 any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.
- 7.6 The Buyer agrees that the Seller shall not be liable in respect of any claim by the Buyer (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Goods (including Goods designed by the Seller and approved by the Buyer) and/or Services under this Agreement and whether as a result of any breach, default, negligence or otherwise by the Seller.
- 7.7 Subject to clauses 7.8 and 7.9, the maximum liability of the Seller for any and all breaches of this Agreement, or any negligent act or omission in relation to the supply of the Goods and/or Services will be capped at the amount of the Price paid by the Buyer to the Seller under this Agreement.
- 7.8 In the event that the *Trade Practices Act 1974* (Cth) (or analogous legislation) applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute into this Agreement, the liability of the Seller is limited, at the option of the Seller, to:
- (a) in the case of Goods, any one or more of the following:
- (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired.
- (b) in the case of Services:
- (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 7.9 Any of the terms and conditions contained herein which limit or exclude any term, condition or warranty, express or implied, or the liability of the Seller shall apply to the extent permitted by law and shall not be construed as excluding, qualifying or limiting the Buyer's statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by legislation.
- 8 Defects>Returns**
- 8.1 The Goods will be deemed to have been delivered in accordance with this Agreement unless the Buyer, within 7 days following receipt of the Goods notifies the Seller of any defect, shortage in quantity, damage or failure to comply with the Buyer's Order. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way.
- 8.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject pursuant to clause 8.1, the Seller's liability, in addition to any limitation under clause 7, is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Buyer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned in accordance with procedures specified by the Seller from time to time; and
 - (c) the Goods are returned undamaged in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 The Seller may, in its discretion but it is not obligated to, accept any undamaged Goods for a credit or return. Any credit or return agreed to by the Seller may incur a restocking fee as specified by the Seller from time to time plus any freight.
- 9 Warranty**
- 9.1 Subject to clause 9.2, the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within the warranty period as stipulated by the Seller at the time of sale (and if none is specified then the warranty period will be 12 months from the date of delivery) then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.
- 9.2 The conditions applicable to the warranty given by clause 9.1 are that:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Buyer to properly maintain any Goods;
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller in respect of the Goods;
 - (iii) any use of any Goods otherwise than for any application specified on a Quotation or Order Form or as specified by the Seller from time to time;
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or Act of God;
 - (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled by the Buyer without the Seller's written consent; and
 - (c) in respect of all warranty claims the Seller shall not be liable to compensate the Buyer for any delay by the Seller in either replacing or repairing the Goods or in properly assessing the Buyer's claim.
- 9.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by, nor responsible for, any term, condition, representation or warranty given by the manufacturer of the Goods.
- 10 Intellectual Property**
- 10.1 Where the Seller has designed or drawn Goods for the Buyer as part of the Order, then all Intellectual Property Rights in those

- designs or drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion and in accordance with terms specified by the Seller.
- 10.2 Where the Buyer has provided designs or drawings to the Seller for the Seller to manufacture or produce the Goods, the Buyer will retain all Intellectual Property Rights in such designs or drawings except to the extent that the Seller is required to make any modification, enhancement or improvement to the designs or drawings.
- 10.3 The Buyer warrants that all designs, drawings or instructions provided by the Buyer to the Seller in relation to the Order will not cause the Seller to infringe any Intellectual Property Rights owned by a third party.
- 11 Default & Consequences Of Default**
- 11.1 Interest on overdue amounts owed by the Buyer to the Seller shall accrue daily from the date when payment becomes due until the date of payment at a rate of 2.5% compounding per calendar month.
- 11.2 If the Buyer defaults in payment of any amounts when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements arising from such default including legal costs on a solicitor and own client basis, any late fees or administrative charges of the Seller and all of the Seller's nominee's or agent's costs of collection.
- 11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods and/or Services to the Buyer and any of its other obligations under this Agreement. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 11.4 In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law:
- (i) the Seller shall be entitled to cancel all or any part of any Order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 11.1.
- 12 Title to Goods**
- 12.1 Property in the Goods shall not pass from the Seller to the Buyer unless and until:
- (a) the Buyer has paid to the Seller all amounts owing for the particular Goods under this Agreement; and
- (b) the Buyer has met all other obligations of the Buyer to the Seller in respect of all agreements between the Seller and the Buyer, and that where practicable the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 12.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- 12.3 It is further agreed that until such time as property in the Goods shall pass from the Seller to the Buyer:
- (a) the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease;
- (b) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made;
- (c) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee and licensee of the Buyer, where the Goods are situated and take possession of the Goods;
- (d) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from its sale or disposal of the Goods on trust for the Seller;
- (e) the Buyer shall not deal with any money of the Seller in its possession in any way which may be adverse to the Seller;
- (f) the Buyer shall not encumber or charge the Goods in any way or grant or otherwise give any interest in the Goods while they remain the property of the Seller;
- (g) the Seller may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
- (h) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted or made part of any end product, the parties agree that the Seller will be the owner of the end product.
- 13 Unpaid Seller's Rights To Dispose Of Goods**
- 13.1 In the event that:
- (a) the Seller retains or regains possession or control of the Goods; and
- (b) payment of the Price is due to the Seller; and
- (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this Agreement; and
- (d) the Seller has not received the Price of the Goods, then, irrespective of whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.
- 14 Cancellation**
- The Seller may terminate this Agreement or cancel delivery of Goods and/or Services to the Buyer at any time before the Goods and/or Services are delivered by giving written notice to the Buyer. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15 Guarantee**
- The Buyer agrees to procure that the Guarantor(s) specified by the Seller provide a guarantee and indemnity in favour of the Seller, for the purposes of securing performance of the Buyer's obligations hereunder on such terms as are specified by the Seller.
- 16 Credit reporting**
- 16.1 The Buyer agrees to sign any consents or other forms required by the Seller under which it will consent, amongst other things, to the Seller obtaining credit information about the Buyer or providing a credit report in relation to the Buyer or exchanging credit information about the Buyer to third parties, including as outlined in this clause 16.
- 16.2 The Buyer agrees for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.
- 16.3 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers named in the application for credit or named in a consumer credit report issued by a reporting agency for the following purposes: (a) to assess a credit application by the Buyer; (b) to notify other credit providers of a default by the Buyer; (c) to exchange information with other credit providers as to the status of the credit account, where the Buyer is in default with other credit providers; and (d) to assess the credit worthiness of the Buyer.
- 16.4 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 16.5 The Buyer agrees that personal data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and the Seller or required by law from time to time:
- (a) provision of the Goods and/or Services;
- (b) marketing of the Goods and/or Services by the Seller or its agents;
- (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of the Goods and/or Services;
- (d) processing any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer;
- (e) enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and/or Services; or
- (f) providing information to potential guarantors of the Buyer's obligations to the Seller.
- 16.6 The Seller may give information about the Buyer to a credit reporting agency to obtain a consumer credit report about the Buyer and/or to allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 17 Lift Service Agreement**
- 17.1 Where a lift service agreement has been purchased by the buyer they agree to all the terms and conditions here within these terms

- and conditions and any terms and conditions contained within their quote offered by the seller.
- 17.2 The agreement will be deemed to continue each year unless the buyer notifies the seller in writing within thirty (30) days of the completion of the agreement.
- 17.3 The completion date of the agreement will be twelve (12) months after the acceptance date or the length of time stated on the agreement.
- 17.4 Where the agreement is to continue, the price of the agreement will increase per year by the amount of the national Australian CPI (Consumer Prices Index) or by the amount Shotton Lifts Australia determines fair and reasonable and is accepted by the buyer.
- 17.5 The sellers only responsibility apart from those included in these terms and conditions is to service and maintain the goods and the carry out the services offered as stated on the sellers quote.
- 17.6 Items the seller are not responsible for include but shall not be limited to the following:
- (a) Car superstructure (including removable door panels, plenum chambers, ceilings, light diffusers, hand rails, floor coverings, internal surfaces), structural lift well enclosures (including beams, landing door frames, architraves, finishes, sills, car door sills, machine rooms), ventilation equipment servicing motor or machine room, any equipment used for the removal of water from lift pits or machinery areas, electrical mains on supply side of lift main switchboard in machine room, lighting tubes, globes or fittings for machine rooms, lift cars and escalator balustrades, car fascia plates, enclosures, push button or indicator panels, telephone, audio, communication or security equipment and any wiring associated which is external to machine or lift well enclosures. Buried piping, cylinders, caissons of hydraulic lifts, except for wearing parts and seals where access to same is practicable, lift equipment which has been misused, vandalised or maliciously damaged.
- 17.7 Shotton Lifts Australia shall not be obliged to provide any services other than those described herein and / or contained within the accepted quote except at the specific and written request and at the expense of the owner. Shotton Lifts Australia shall at the sole expense of the owner attend to but not be limited to the following:
- (a) Install new attachments
- (b) Attend to structural or other alterations
- (c) Carry out repairs, renewals or replacements necessitated or caused by reason beyond the control of Shotton Lifts Australia and attend to the replacement of parts or components of a different make or design resulting from the direction of any statutory authority or at the direction of the owner or other interested party which after the commencement of the Agreement become necessary provided that the fee structure applicable to such services shall be determined by agreement between Shotton Lifts Australia and the owner and further that where at the owner's request such services are to be carried out outside normal working hours Shotton Lifts Australia shall be entitled to charge out the cost of such services at its normal overtime rate and further that such services shall not commence until agreement has been reached in terms of the total cost of such additional services as well as the time and mode of payment.
- 17.8 Shotton Lifts Australia shall continue to maintain a similar degree of performance standard in respect of the equipment in existence at the date of commencement of this agreement or at a level agreed between both parties in the quote.
- 17.9 Shotton Lifts Australia will attend for due maintenance to perform any works quoted for the length of the agreement, during times to be agreed upon with the buyer, provided that Shotton Lifts Australia shall not be obliged pursuant to this Agreement to attend and discharge its obligation outside normal working hours (8am to 4.30pm Monday to Friday) or during statutory or award public holidays. Such requests for works to be carried out outside of working hours shall be charged at full overtime rates that are current at the date requested.
- 17.10 Any repairs for breakdowns outside of the scope quoted or the warranty period shall be quoted and the buyer must agree in writing by way of a signed agreement or quote to pay for the repairs prior, or as agreed between both parties, to any works being carried out. Alternatively, provided it is agreed to by the buyer, the works may be carried out charging the current hourly rate for the time taken to complete the works, based on the current hourly rates and charge for any required and used parts.
- 17.11 Shotton Lifts Australia and the buyer shall be obliged to notify each other in relation to any event or circumstance in connection with the state of repair of the equipment and its capacity to function adequately in the event that any material circumstance occurs which is likely to adversely affect the safe and efficient functioning of the equipment.
- 17.12 Where phone support is part of the agreement, Shotton Lifts Australia shall supply appropriately skilled lift technicians who are readily available to offer basic advice for repairs to the equipment by phone 24 hours x seven days per week. Where the phone support service advice isn't successful, Shotton Lifts Australia shall satisfy all requests by the owner to attend the owner's premises as a result of a breakdown or malfunctioning of equipment. Travel time and the first hour per attendance shall be provided free of charge during working hours for basic assistance only. Any parts required will be charged at a rate as per the agreement. If attendances are required outside the normal working hours of 7.30am to 4.30pm Monday to Friday or during statutory or award public holidays all time including travel will be charged at the current overtime rates. Any works carried out after hours shall have only such temporary repairs and/or adjustments effected as are within the capacity of the attending employee and the balance of any such work, if any, shall be effected during normal working hours.
- 17.13 Any repairs for breakdowns outside of the warranty period shall be quoted and the buyer must agree in writing by way of a signed agreement or quote to pay for the repairs prior to any works being carried out.
- 18 General**
- 18.1 If any provision of this Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 This Agreement shall be governed by the laws of the State of Victoria and the parties consent to the jurisdiction of the Courts of the State of Victoria and their Courts of appeal.
- 18.3 The Buyer shall not set off against the Price amounts due from the Seller to the Buyer.
- 18.4 The Seller may license or sub-contract all or any part of its rights and obligations under this Agreement without the Buyer's consent.
- 18.5 The Seller reserves the right to review the terms and conditions of this Agreement at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 18.6 Neither party shall be liable for any default due to any Act of God.
- 18.7 A waiver of any right or power under this Agreement will only be valid if given in writing by the party granting the waiver.
- 18.8 This Agreement supersedes all prior representations, arrangements and agreements between the parties in relation to its subject matter and forms the entire agreement between the parties.
- 18.9 Each provision of this Agreement capable of having effect after termination shall survive termination of this Agreement and shall not merge on such termination.