



## TERMS AND CONDITIONS

This Agreement is entered into between us and you, together the **Parties** and each a **Party**.

### 1. Services

- 1.1 In consideration of your payment of the Hire Fees, we will provide the Services in accordance with this Agreement, whether ourselves or through our Personnel.
- 1.2 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the scope of the Services or our obligations under this Agreement, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.
- 1.3 Notwithstanding clause 1.2, you agree that we may vary the Services or the Hire Fees at any time, by providing 30 days' written notice to you (**Variation Notice Period**). If you do not agree to any amendment made to the Services or Hire Fees, you may, before the end of the Variation Notice Period, terminate this Agreement by giving us 30 days' notice in writing, in which case, the proposed variation will not come into effect and clause 8.4 will apply.

### Collecting the Equipment

- 1.4 If we are responsible for delivering the Equipment to you, we will use reasonable endeavours to deliver the Equipment by the time agreed between the Parties, and risk in the Equipment will pass to you once we have delivered the Equipment to the agreed delivery location. You will be responsible for the costs of delivery.
- 1.5 If you are responsible for collecting the Equipment from us, you must collect the Equipment by the time agreed between the Parties, and risk in the Equipment will pass to you once you have collected the Equipment from the agreed collection location. You will be responsible for the costs of collection.

### Operating the Equipment

- 1.6 You will be responsible for the cost of operating the Equipment, including the cost of any consumables (such as fuel or registrations).
- 1.7 For Long Term Hire of the Equipment, you will take out and maintain, for the duration of the

Term, insurance sufficient to cover the full replacement value of the Equipment in the event of loss or damage.

- 1.8 You agree to (and to the extent applicable, ensure that your Personnel agree to):
  - (a) comply with this Agreement, all applicable Laws, our reasonable requests, and any operating instructions for the Equipment;
  - (b) contact us immediately if there is any damage to or defects in the Equipment;
  - (c) ensure that any person using the Equipment is properly qualified or trained to safely do so;;
  - (d) not allow anyone to interfere or otherwise tamper with the Equipment;
  - (e) not allow any third party to conduct repairs or maintenance on the Equipment without our prior consent;
  - (f) ensure that any repairs or maintenance on the Equipment are conducted only by us or by a party that we have expressly approved in writing;
  - (g) pay us the cost of the Equipment (as a debt due and immediately payable) where their loss, theft, damage or destruction occurs;
  - (h) provide us (and our Personnel) with access to your premises (and its facilities) as is reasonably necessary for us to provide the Services, free from harm or risk to health or safety at the times and on the dates reasonably requested by us or as agreed between the Parties;
  - (i) protect and maintain the Equipment in the Original Condition;
  - (j) keep the Equipment in your custody and control at all times, and not sublease, rent, sell or otherwise transfer the Equipment to any other person; and
  - (k) read, understand, and strictly adhere to any manuals, operating instructions, or other documentation provided with the Equipment.

## Returning the Equipment

- 1.9 You must return the Equipment to us in the Original Condition at the time agreed between the Parties, or if no time is specified, upon termination or expiry of this Agreement.
- 1.10 You agree that if you do not return the Equipment to the return location by the agreed time, or have not made the Equipment available for our collection at the agreed time (if we have elected to collect the Equipment, in our sole discretion), then we may charge you the Late Return Charge.
- 1.11 You agree that the Late Return Charge is a genuine pre-estimate of loss suffered or incurred by us as a result of your delay in returning the Equipment to us.

## Title, Risk and Security

- 1.12 Title in any Equipment leased to you will at all times remain with us, and you:
  - (a) take the Equipment as a bare bailee only;
  - (b) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure our retention of title to the Equipment, including the registration of any security interest in our favour with respect to the Equipment; and
  - (c) must not allow any other person to have or acquire any security interest in the Equipment without our prior written consent.
- 1.13 To the extent that our interest in the hire of the Equipment is a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**):
  - (a) we may register any actual or likely security interest, and you must take all steps that we consider necessary or desirable to ensure our security interest in the Equipment and any proceeds of its sale is enforceable, and to perfect and ensure our priority over all other security interests;
  - (b) if we register our security interest in accordance with the PPSA, it is without prejudice to any other rights that we have at law;
  - (c) you acknowledge and agree that we have not authorised any disposal or dealing of the Equipment, and our security interest attaches to any proceeds of sale of the Equipment;

- (d) you waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA, including but not limited to notices under sections 95, 118, 121, 130, 132, 135 or 157;
- (e) you agree that sections 95, 96, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA do not apply to the enforcement of our security interest; and
- (f) you must not disclose any information of the kind referred to in section 275 of the PPSA, to the extent permitted under that section.

## Vehicle Hire and Licensing

- 1.14 If the Equipment includes a vehicle, you agree that:
  - (a) you and any person operating the vehicle must hold a current, valid driver's license appropriate for the class of vehicle being hired, as required by Law;
  - (b) you will provide us with a copy of the driver's license for each person who will be operating the vehicle before the commencement of the Term;
  - (c) you will immediately notify us if any driver's license is suspended, cancelled, or expires during the Term;
  - (d) you will not allow any person to operate the vehicle unless they hold the appropriate license and you have provided us with a copy of that license;
  - (e) you acknowledge that we have the right to refuse hire if, in our reasonable opinion, a driver's license presented to us is not acceptable or the driver appears unfit to operate the vehicle;
  - (f) you are responsible for ensuring compliance with all traffic laws and regulations while using the hired vehicle; and
  - (g) you will be liable for any fines, penalties, or charges incurred during the use of the vehicle.

## 2. Orders

- 2.1 During the Term, you may request us to supply the Services by notifying us in writing or by any other process we specify (**Order Request**).

- 2.2 If we accept the Order Request, we will issue confirmation of your Order Request and it will become a binding Order.
- 2.3 Each Order is subject to, and will be governed by, this Agreement and any other conditions expressly set out in the Order. To the extent of any ambiguity or discrepancy between an Order and this Agreement, the terms of the Agreement will prevail.
- 3. Hire Fees and Payment**
- 3.1 In consideration for us providing the Services, you agree to pay all amounts due under this Agreement in accordance with the Payment Terms.
- 3.2 If you are required to pay a bond in respect of any Equipment, you agree that:
- (a) we will have no obligation to provide the Equipment to you until you have paid the bond in full;
  - (b) the bond will be used as security by us for your obligations under this Agreement, and we may call upon the bond to satisfy any obligations or liabilities owed by you; and
  - (c) subject to your compliance with this Agreement, we will refund you the balance of the bond (if any) within a reasonable time after the end of the relevant lease period.
- 3.3 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under this Agreement or at Law):
- (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);
  - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms; and/or
  - (c) enter any premises where the Equipment is stored or held, for the purpose of retrieving and taking possession of the Equipment, and you agree to provide any access, items and consents required to enable us to do so.

- 3.4 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### **4. Warranties and Representations**

- 4.1 Each Party represents and warrants that:
- (a) it has full legal capacity, right, authority and power to enter into this Agreement, to perform its obligations under this Agreement, and to carry on its business; and
  - (b) this Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.
- 4.2 You represent and warrant that:
- (a) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
  - (b) no insolvency events (including but not limited to bankruptcy, receivership, voluntary administration, liquidation or creditors' schemes of arrangement) affecting you or your property are occurring or are likely to occur; and
  - (c) if you enter into this Agreement as a trustee of a trust, then:
    - (1) you are the sole trustee of the relevant trust and have been validly appointed;
    - (2) you have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and
    - (3) you have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by you under the Agreement.

#### **5. Confidential Information**

- 5.1 Subject to clause 5.2, each Party must (and must ensure that its Personnel) keep confidential, and not use (except to perform its obligations under this Agreement) or permit any unauthorised use of, information provided by the other Party, including information about this Agreement and the other Party's business and operations.

5.2 Clause 5.1 does not apply where the disclosure is required by Law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the disclosing Party ensures the adviser complies with the terms of clause 5.1.

5.3 This clause 5 will survive the termination of this Agreement.

## 6. Australian Consumer Law

6.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in this Agreement excludes those Consumer Law Rights.

6.2 Subject to your Consumer Law Rights, we provide all material, work and services (including the Services) to you without conditions or warranties of any kind, implied or otherwise, whether in statute, at Law or on any other basis, except where expressly set out in this Agreement.

6.3 This clause 6 will survive the termination or expiry of this Agreement.

## 7. Liability

7.1 To the maximum extent permitted by law, you are liable for and you and agree to indemnify us and hold us harmless in respect of any Liability which we may suffer, incur or are otherwise liable for as a result of, or in connection with:

- (a) any property loss or damage, death or personal injury, arising from or in connection with your improper or negligent use of the Equipment;
- (b) any loss (including theft) of, or damage to, the Equipment when you are responsible for the risk in the Equipment;
- (c) any failure to return the Equipment in its Original Condition; and
- (d) all Liabilities suffered or incurred by us in repossessing or recovering the Equipment in accordance with this Agreement.

7.2 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by Law:

- (a) neither Party will be liable for Consequential Loss;

(b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and

(c) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and

(d) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to the Hire Fees paid by you to us in respect of the supply of the relevant Services to which the Liability relates.

7.3 This clause 7 will survive the termination or expiry of this Agreement.

## 8. Term and Termination

8.1 This Agreement will operate for the Term.

8.2 Either Party may terminate this Agreement at any time by giving 30 days' notice in writing to the other Party.

8.3 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.

8.4 Upon expiry or termination of this Agreement:

- (a) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Services already performed are not refundable to you;
- (b) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;



- (c) you must return the Equipment to us, or make the Equipment available for our collection (at our sole discretion), and grant us a right of access to your premises where the Equipment is located for this purpose;
- (d) by us pursuant to clause 8.3, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
- (e) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 5.

8.5 Unless otherwise agreed between the Parties, if this Agreement is terminated:

- (a) by us, then any current Order will also terminate on the date of termination and we will immediately cease providing the Services; or
- (b) by you, then any outstanding Orders will continue in accordance with the terms of the Order (and this Agreement) until such time as the Order is complete or the Order is otherwise terminated in accordance with its terms.

8.6 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

8.7 This clause 8 will survive the termination or expiry of this Agreement.

## 9. General

9.1 **Amendment:** Subject to clauses 1.2 and 1.3, this Agreement may only be amended by written instrument executed by the Parties.

9.2 **Assignment:** Subject to clauses 9.3 and 9.13, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

9.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

9.4 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

9.5 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement (**Dispute**) without first meeting a representative of the other Party within 10 Business Days of notifying that other Party of the Dispute. If the Parties cannot resolve the Dispute at that meeting, either Party may refer the Dispute to mediation administered by the Australian Disputes Centre.

9.6 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

a. Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

9.7 **Further Assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.

9.8 **Governing Law:** This Agreement is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

9.9 **Intellectual Property:** Nothing in this Agreement constitutes an assignment or transfer of a Party's intellectual property rights to the other Party.

9.10 **Notices:** Any notice given under this Agreement must be in writing addressed to the addresses set out in this Agreement, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any

notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

- 9.11 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 9.12 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.
- 9.13 **Subcontracting:** We may subcontract the provision of any part of the Services without your prior written consent. We agree that any subcontracting does not discharge us from any liability under this Agreement and that we are liable for the acts and omissions of our subcontractor.
- 9.14 **Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing and will be effective only to the extent specifically stated.

## 10. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, and:

**Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Agreement** means these terms and conditions and any agreed Order issued under it and any documents attached to, or referred to in, each of them.

**Business Day** means a day on which banks are open for general banking business in Sydney, New South Wales, excluding Saturdays, Sundays and public holidays.

**Consequential Loss** includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of

reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Hire Fees and any other amounts payable under this Agreement will not constitute "Consequential Loss".

**Consumer Law Rights** has the meaning given in clause 6.1.

**Equipment** means any equipment that we lease to you as part of the Services.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Hire Fees** means the fees set out in the Schedule or any Order, as adjusted in accordance with this Agreement.

**Law** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement or the supply of the Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

**Long Term Hire** means any hire of Equipment for a period exceeding 14 days.

**Order** means an order for the supply of Services, placed in accordance with clause 2, a form of which is set out in Annexure 1.

**Original Condition** means the Equipment being clean and free from damage or defect, and in the



same condition in which we provided the Equipment to you, subject to fair wear and tear.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Schedule** means the schedule to this Agreement.

**Services** means the services set out in the Schedule or any Order, as adjusted in accordance with this Agreement.

## 11. Interpretation

b. In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a person includes a natural person, body corporate, partnership, joint venture, association, government or statutory body;
- (d) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns;
- (e) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (f) a reference to time is to local time in Sydney, New South Wales; and
- (g) a reference to \$ or dollars refers to the currency of Australia from time to time.