

TERMS AND CONDITIONS OF AGREEMENT

1. Effect of Agreement and Acknowledgements

- 1.1. The Lessee has inspected the Goods and enters into this Agreement in reliance upon that inspection and the Lessee's own judgement as to the quality of the Goods and the fitness of the Goods for the Lessee's purposes.
- 1.2. The Lessee acknowledges that the Lessor does not guarantee that the Goods are of any particular quality.
- 1.3. The Lessee does not rely on the Lessor's skill or judgement in relation to the Goods.
- 1.4. The Lessee acknowledges that the Lessor does not make any representations regarding the tax and accounting treatment and consequences of this Agreement for the Lessee, and the Lessee will need to seek its own professional advice in this respect
- 1.5. In this agreement the term "Lessor" includes any assignee of the Lessor.

2. Representations and Acknowledgements

- 2.1. The Lessee represents on the date of this Agreement and on the date on which each Lease Amount is payable that:
 - (a) it has the power and is authorised to enter into this Agreement;
 - (b) this Agreement is valid and binding on the Lessee;
 - (c) its entry into, and performance of its obligations under, this Agreement do not, and will not, breach any law or any material agreement affecting it;
 - (d) the Lessee has not made known to the Lessor any specific requirements or purpose for which the Goods will be used, and it has not received, and/or does not rely on, any representation, condition, warranty or undertaking from the Lessor, or from any person acting, or purporting to act, on behalf of the Lessor as to the condition, suitability, quality, fitness for purpose or safety of the Goods.
- 2.2. No intellectual property rights (including, but limited to, copyrights, patents and trademarks) in the Goods will pass under this Agreement.
- 2.3. The Lessee acknowledges that it will look to the Supplier, and not to the Lessor, for any collateral warranty the Lessee may require in relation to the Goods.
- 2.4. The parties acknowledge that, notwithstanding any provisions of the Contractual Remedies Act 1979, the only remedy for misrepresentation, repudiation or breach of contract by the Lessor is a remedy for damages. For the avoidance of doubt, the Lessee shall not be entitled to cancel or otherwise terminate this Agreement upon the event of a misrepresentation, repudiation or breach of contract by the Lessor.

3. The Lessor Owns the Goods

- 3.1. The Lessor owns the Goods, and title will not pass to the Lessee.

4. Payment by the Lessee of Amounts Due

- 4.1. The Lessee will pay the Lessor all amounts required by the Principal Terms, when they are due to the Place of Payment specified in the Principal Terms.
- 4.2. The Lessee will pay by automatic payment or will give the Lessor an authority for direct debit if the Lessor requires, or will otherwise pay the Lessor where directed.
- 4.3. The Lessee must make all payments to the Lessor without any set-off, counterclaim or deduction of any other kind, and acknowledges that the Lessor is not responsible for the provision of any maintenance services the Lessee may have contracted in respect of the Goods.
- 4.4. If the Lessee is required to pay an Advance Lease Amount (as specified in the Principal Terms), such amount must be paid on the date the first Lease Amount is due, together with that Lease Amount, and will be applied by the Lessor in satisfaction of any instalments due by the Lessee immediately prior to the expiry of this Agreement, up to an equivalent amount to the Advance Lease Amount.

5. Lessee to Insure Goods

- 5.1. The Lessee will fully insure the Goods, in the names of the Lessee and the Lessor.
- 5.2. The Lessee will forward the policy and premium receipts to the Lessor, if the Lessor requires.
- 5.3. If the Lessor receives any insurance money, the Lessor may use it to:
 - (a) pay for repairing any damaged Goods; and/or
 - (b) repay any of the money payable by the Lessee under the Agreement.

6. Lessee to Keep Goods in Good Order and Repair

- 6.1. The Lessee will keep the Goods in good order and repair.
- 6.2. If the Lessee or any other person alters the Goods, or adds any item to them, the alterations and additions will belong to the Lessor.

7. Lessee not to Sell, Charge etc Goods or Assign Agreement

- 7.1. The Lessee will not sell, hire out or lose possession of the Goods.
- 7.2. The Lessee will not assign the Lessee's rights under this Agreement, unless the Lessor consents in writing.
- 7.3. The Lessee will not give any security interest over the Goods to anyone other than the Lessor.

8. Lessee to Comply with Laws Affecting the Goods

- 8.1. The Lessee will keep the Goods registered or licensed if required, will comply with all laws in relation to the Goods, and, if a vehicle, will maintain a current warrant or certificate of fitness and will not permit an unlicensed driver to drive it.

9. Lessee to Notify Change of Address, Status or Serial Number

- 9.1. The Lessee will notify the Lessor in writing at once of any change of:
 - (a) the Lessee's address;
 - (b) any registration or serial number for the Goods.
- 9.2. If the Lessee becomes liable to be registered for the purpose of the Goods and Services Tax Act 1985, or ceases to be so registered, the Lessee will notify the Lessor of any such change, and of the Lessee's GST registration number, as appropriate.

10. The Lessor may Inspect Goods

- 10.1. The Lessee will allow the Lessor or its agents to inspect the Goods at all reasonable times.

11. Protection of the Lessor's Interests

- 11.1. If the Lessor incurs any expense in respect of the Goods or in performing any obligations of the Lessee which the Lessee has not performed, the Lessee will repay those expenses to the Lessor when required.
- 11.2. The Lessee irrevocably appoints the Lessor and every senior manager of the Lessor, severally to be the attorney of the Lessee to apply for any new certificate of registration for the Goods, and to do so on behalf of the Lessee anything else that the Lessee ought to do under this Agreement.

12. Default Interest

- 12.1. If the Lessee does not make any Payment before the close of banking business on its due date, the Lessee will, upon demand by the Lessor, pay to the Lessor interest on the amount unpaid on a daily basis, calculated at the default interest rate. The default rate is the Default Interest Rate as shown in the Principal Terms.

13. Repossession of Goods

- 13.1. The Lessor can repossess and sell the Goods, and/or terminate this Agreement and sell the Goods by written notice to the Lessee if:
 - (a) the Lessee does not perform any of the provisions of this Agreement;
 - (b) distress, execution or a warrant to seize is issued against, or a lien is claimed, in respect of the Goods or the Goods is otherwise at risk;
 - (c) any Court Judgement against the Lessee remains unsatisfied for more than 7 days;
 - (d) the Lessee is a company and there is a transfer of any of the shares in the Lessee which effectively alters the control of the Lessee, unless the Lessor consents;
 - (e) the Lessee becomes insolvent;
 - (f) a receiver is appointed in respect of any assets of the Lessee;
 - (g) an application is made for the liquidation of the Lessee, or the Lessee passes a resolution to go into liquidation.
- 13.2. If the Lessor terminates this Agreement, all unpaid amounts will become immediately payable, even if not otherwise yet due.

- 13.3. The Lessor may itself purchase the Goods at any sale under clause 13.1, in full or part satisfaction of the debt, and if the Goods are attached to any other goods, the Lessor may remove them without being liable to the Lessee.
- 13.4. The Lessor is not liable if, for whatever reason, the Lessor advises the Lessee of the result of any sale of the Goods by the Lessor later than required by PPSA.
- 14. Early Termination by Lessee**
- 14.1. If this Agreement is terminated or expires:
- (a) the Lessee shall immediately deliver the Goods to the Lessor; and
 - (b) the market residual value ("Market Residual Value") or the Goods shall be determined, which will be:
 - (i) the net proceeds of sale of the Goods by the Lessor; or
 - (ii) if the Goods have not been sold, their market value as reasonably assessed by the Lessor.
- 14.2. If this Agreement is terminated or expires and an Assumed Residual Value is shown in the Principal Terms, then:
- (a) if the Market Residual Value is less than the Assumed Residual Value, the Lessee shall immediately pay the Lessor the difference, plus interest at the Default Interest Rate from the time the Agreement was terminated or expired until the date of payment; but
 - (b) if the Market Residual Value is greater than the Assumed Residual Value, the Lessor shall pay the Lessee the difference.
- 14.3. Nothing in Sections 117 and 119 of PPSA entitles the Lessee to claim any greater amount than the amount (if any) payable to the Lessee under clauses 14.1 and 14.2.
- 15. Cancellation by Lessee**
- 15.1. The Lessee can only cancel this Agreement by giving the Lessor notice in writing if it is entitled by law to cancel. Cancellation will not reduce the Lessee's liabilities.
- 16. Variation of Agreement**
- 16.1. The Lessee and the Lessor can only agree to vary this Agreement in writing.
- 17. GST Treatment**
- 17.1. The Lease amounts referred to in this Agreement will be based on the rate of goods and services tax payable pursuant to the Goods and Services Tax Act 1985 at the Commencement Date (as specified in the Principal Terms). The Lease Amounts shall consequently increase or decrease upon any variation in the rate of goods and services tax payable during the term of this Agreement.
- 18. Personal Property Securities Act 1999**
- 18.1. The Lessee acknowledges that this Agreement creates a Security Interest in the Goods under the PPSA and this Security Interest is registerable in the Personal Property Securities Register.
- 18.2. The Lessee must sign and deliver any documents that the Lessor requires to ensure that it has a perfected first ranking Security Interest in the Goods under the PPSA.
- 18.3. The Lessee waives any right to receive a copy of a verification statement (as defined in the PPSA) under the PPSA and agrees to the extent permitted by law that:
- (a) where the Lessor has rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA;
 - (b) sections 114(1)(a), 133 and 134 of the PPSA will not apply; and
 - (c) the Lessee will have none of the rights referred to in sections 116, 117(1)(c), 119, 120(2), 125, 127, 129 and 131 of the PPSA and the Lessee waives its rights to object under section 121 and to redeem under section 132 of the PPSA.
- 19. Indemnity**
- 19.1. During the term of this Agreement, the Lessee shall be responsible to the Lessor for and hereby indemnifies the Lessor against:
- (a) any loss of the Goods howsoever caused and all damage caused by or to the Goods;
 - (b) any claim, costs, damages or demands whatsoever or howsoever caused in respect of any injuries to or the death of any person arising in connection with the Goods, any loss of business, and any loss or damage to any property, and shall furnish within a reasonable time such information and assistance as the Lessor may reasonably require in respect of such loss, claims, costs, damages or demands.
- 19.2. During the term of this Agreement, the Lessee indemnifies the Lessor against any costs it incurs in maintaining its security interest in the Goods and exercising any of its rights under this Agreement or Part 9 of the PPSA. The Lessee indemnifies the Lessor against any liability or additional liability which the Lessor may incur for any stamp and other duties, Tax (including Goods and Services Tax and default or penalty Goods and Services Tax but excluding income taxes), fees, charges, imposts, levies or excise or withholding taxes payable to any governmental body or local authority by reason of:
- (a) The Lessor's purchase of the Goods;
 - (b) this Agreement;
 - (c) any payment, receipt or other transaction arising out of the Lessor's purchase of the Goods or this Agreement; or
 - (d) the use of the Goods by the Lessee.
- 19.3. During the term of this Agreement, the Lessee indemnifies the Lessor against:
- (a) any loss of, or damage to, the Goods, however, arising;
 - (b) any claim for breach of intellectual property rights arising in connection with the Goods or its use;
 - (c) any loss arising from all or part of this Agreement being invalid, void, voidable or unenforceable for any reason; and
 - (d) any loss or liability (including loss of business, loss or damage to any property or liability for any death or injury to any person) incurred by the Lessor resulting from the possession, use or operation of the Goods by the Lessee.
- 19.4. Each indemnity in this clause is a separate and independent obligation and continues after termination of this Agreement.
- 19.5. Each indemnity in this clause includes, without limiting the generality of this clause, legal costs and expenses on a full solicitor-own client basis.
- 20. Offsets by the Lessor**
- 20.1. If the Lessee does not make any payment when due, the Lessor can debit the amount to any other account of the Lessee with the Lessor, or deduct it from any amount the Lessor owes the Lessee.
- 21. Notices**
- 21.1. Notices under this Agreement may be sent by the Lessor to the Lessee's address as shown in this Agreement.
- 22. Assignment**
- 22.1. The Lessor is entitled to assign or otherwise deal with all or any of its right, title and interest under this Agreement. All of the Lessor's right under this Agreement will enure for the benefit of any assignee.
- 23. Collection, Use and Disclosure of Information**
- 23.1. From time to time the Lessor and any assignee may collect and securely hold information about the Lessee and each Guarantor. The Lessor and any assignee will make every effort to keep personal details about the Lessee and each Guarantor up to date. The Lessee and each Guarantor may access and correct this information under the Privacy Act 1993.
- 23.2. The Lessor and any assignee may use this information to:
- (a) consider the Lessee's application for facilities, products or services;
 - (b) administer, manage and monitor any facilities, products or services provided to the Lessee;
 - (c) conduct market research, data processing and statistical analysis; and
 - (d) unless the Lessee and/or a Guarantor disagrees, provide the Lessee and/or each Guarantor with information about other facilities, products or services including selected third party products or services.
- 23.3. The Lessor and any assignee may disclose information about the Lessee and each Guarantor to its related companies (as defined by the Companies Act 1993), agents or contractors for the above purposes.
- 23.4. The Lessor and any assignee may disclose information about the Lessee and each Guarantor to credit reference agencies for the purpose of obtaining credit reports. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services.

- 23.5. If the Lessee or a Guarantor defaults in any obligations to the Lessor and any assignee then the Lessor and any assignee may disclose information about the Lessee and/or Guarantor, as the case may be, to credit reference or debt recovery agencies and it may be retained by them. Those agencies may provide that information to their customers who use their credit reporting services.
- 23.6. The Lessor and any assignee may obtain information and make such enquiries about the Lessee and each Guarantor as the Lessor and any assignee considers is warranted from any source including from its related companies and credit reference agencies for the above purposes.

24. Guarantors

24.1. Each Guarantor:

- (a) guarantees (jointly and severally if more than one) repayment to the Lessor of all amounts payable by the Lessee pursuant to this Agreement, and the performance of all of the Lessee's obligations under this Agreement.
- (b) acknowledges that the Lessor has entered into this Agreement with the Lessee at the request of the Guarantor, that the Lessor might not have done so without the Guarantor's guarantee, and that the Lessor doing so is a benefit to the Guarantor.
- (c) agrees that if the Lessee does not pay any amount, or perform any obligation, under this Agreement, the Guarantor will do so on demand.
- (d) agrees that if for any reason any amounts payable by the Lessee under this Agreement or any collateral securities are not recoverable by the Lessor, whether as a matter of law or as a matter of fact, the Guarantor will indemnify the Lessor against any resulting loss, and will pay the amount of any such loss to the Lessor as a principal debtor and on demand.
- (e) agrees that their obligations as a Guarantor are absolute and unconditional, and will not be released or in any way affected by:
 - (i) this Agreement being unenforceable or otherwise defective; or
 - (ii) any variation or release of this Agreement, or any other Guarantor; or
 - (iii) any concessions by the Lessor to the Lessee or to any other Guarantor; or
 - (iv) the insolvency, bankruptcy or liquidation (as appropriate) of the Lessee or any other Guarantor; or
 - (v) any other act, omission, or rule of law which would, were it not for this clause, release a guarantor or indemnifier;and irrevocably waives any rule of law to a different effect.
- (f) acknowledges that the Guarantor is not a "Debtor" for the purposes of the Personal Property Securities Act 1999 ("PPSA") and, to the extent permissible by law, waives any notices or rights of a Debtor under PPSA to the extent inconsistent with these terms.
- (g) acknowledges that the Guarantor has either had independent legal advice prior to executing these terms or, if that has not occurred, that is solely the Guarantor's own choice freely made, and as a result the Guarantor irrevocably waives any rights which the lack of that independent advice might otherwise have given the Guarantor.
- (h) acknowledges that this shall be a continuing guarantee until all the obligations of the Lessee under this Agreement have been fully discharged.