

1 Definitions

- 1.1 "Agent" means JR & SM Kemp Family Enterprises Pty Ltd T/A Carnival Land Amusements, its successors and assigns, or any person acting on behalf of, and with the authority of, JR & SM Kemp Family Enterprises Pty Ltd T/A Carnival Land Amusements.
- 1.2 "Client" means the person/s or entity hiring the Equipment, or any person acting on behalf of, and with the authority of, the Client (including any employees, servants and agents), as specified in any quotation, order, invoice or other document, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; or
 - (b) any trustee acting on behalf of a trust (see clause 21) shall be liable personally.
- 1.3 "Equipment" means all Equipment (including any accessories, consumables, etc.) supplied on hire by the Agent to the Client, at the Client's request, from time to time, and:
- (a) where the context so permits shall include any incidental supply of services (e.g. operators, entertainers, etc.); and
 - (b) the Equipment shall be as described on any quotation, order, invoice or other document as provided by the Agent to the Client; and
 - (c) the Agent may, at its sole discretion, decline to supply the Equipment to the Client.
- 1.4 "Hire Term" means the period of hire of the Equipment by the Client, as described on any quotation, order, invoice or other document as provided by the Agent to the Client.
- 1.5 "Hire Charges" means the cost of the hire of the Equipment, as agreed between the Agent and the Client, subject to clause 4 of this contract.

2 Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions, if the Client places an order for the Equipment, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Agent.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3 Change in Control

- 3.1 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.

4 Hire Charges and Payment

- 4.1 At the Agent's sole discretion Hire Charges shall be either:
- (a) as indicated on invoices provided by the Agent to the Client in respect of Equipment supplied; or
 - (b) the Hire Charges as at the date of Delivery according to the Agent's current price list; or
 - (c) the Agent's quoted Hire Charges (subject to clause 4.2) which shall be binding upon the Agent provided that the Client shall accept in writing the Agent's quotation within thirty (30) days.
- 4.2 The Agent reserves the right to change the Hire Charges:
- (a) if a variation to the Equipment which is to be supplied is requested; or
 - (b) upon one (1) months' written notice to the Client.
- 4.3 At the Agent's sole discretion, a non-refundable deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be offset against the Hire Charges, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 5, and any outstanding balance thereof shall be due and payable by the Client as per clause 4.4.
- 4.4 Time for payment for the Equipment being of the essence, the Hire Charges will be payable by the Client on the date/s determined by the Agent, which may be:
- (a) on Delivery; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice furnished to the Client by the Agent.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the transaction), or by any other method as agreed to between the Client and the Agent.
- 4.6 Unless otherwise stated the Hire Charges do not include GST. In addition to the Hire Charges, the Client must pay to the Agent an amount equal to any GST the Agent must pay for any supply of the Equipment by the Agent under this, or any other, contract for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Hire Charges. In addition, the Client must pay any other taxes and duties (including stamp duties, tolls, fines, penalties, levies, freight, government charges arising out of the Client's use of the Equipment, etc.) that may be applicable in addition to the Hire Charges, except where they are expressly included therein.
- 4.7 The Client acknowledges and agrees that the Client's obligations to the Agent for the supply of the Equipment shall not cease until:
- (a) the Client has paid the Agent all amounts owing for the hire of the Equipment; and
 - (b) the Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.
- 4.8 Receipt by the Agent 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.
- 4.9 The Client shall not be entitled to set off against, or deduct from the Hire Charges, any sums owed or claimed to be owed to the Client by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.

5 Other Charges

- 5.1 In addition to the Hire Charges, the Client will be required to pay to the Agent, immediately upon request:
- (a) for any consumables, fuel or trade materials supplied to the Client by the Agent;
 - (b) where applicable, the costs of Delivery and/or collection of the Equipment (as per clauses 6.4 and 7.1); and
 - (c) all costs incurred in cleaning and/or repairing the Equipment where the Equipment is not returned in good working order (including damage caused by undue wear and tear, such as damage due to rough handling, or neglect by the Client, etc.); and
 - (d) any lost Hire Charges the Agent would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - (e) any insurance excess payable in relation to a claim made by either the Client or the Agent in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Agent's; and
 - (f) any consequential damage or loss, howsoever arising, suffered by the Agent as a result of the Client's breach of any of these terms and conditions.

6 Hire Term

6.1 Hire Charges:

6.2 commence from the time the Equipment departs from the Agent's premises and will continue until the return of the Equipment thereto, unless otherwise agreed in writing between the parties.

- (a) for Equipment in which a timing device is installed, shall be calculated upon the number of hours (or part thereof) recorded on the timing device whilst the Equipment is in the Client's possession; or
- (b) where the Equipment does not have a timing device installed, shall commence from the time the Equipment departs from the Agent's premises and will continue until the return of the Equipment thereto, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

6.3 The Hire Term shall be completed when the Equipment has been returned to the Agent in the same condition as when it was hired, or where the Equipment is unsuitable for rehire on return, until repairs are completed.

6.4 Where the Agent agrees to collect the Equipment, the Client agrees to maintain the responsibility for the Equipment whilst it is awaiting collection, and to pay to the Agent any charges and expenses incurred thereby as per clause 5.1(b).

6.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Agent confirms special prior arrangements in writing. In the event of Equipment breakdown, provided the Client notifies the Agent immediately of such event, Hire Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

7 Delivery

7.1 Delivery of the Equipment ("Delivery") is taken to occur at the time that:

- (a) the Client, or the Client's nominated carrier, takes possession of the Equipment at the Agent's premises; or
- (b) the Agent (or the Agent's nominated carrier) delivers the Equipment to the Client's nominated address (even if the Hire is not present at that address), and the Client will pay to the Agent any charges and expenses incurred thereby as per clause 5.1(b).

7.2 The Client shall be responsible for free access by the Agent to the address at which the Equipment is (to be) located. If there are any delays due to free access not being available, then the Client shall be responsible and shall reimburse the Agent for all lost Hire Charges associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Agent due to delays in access to the Equipment.

7.3 Any time or date specified by the Agent to the Client for Delivery is an estimate only, the Client must still accept Delivery (even if late), and the Agent will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Agent is unable to supply the Equipment, as agreed, solely due to any action or inaction of the Client, then the Agent shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date.

8 Use and Operation of the Equipment

8.1 The Client:

- (a) shall ensure that all persons operating the Equipment are suitably instructed in the Equipment's safe and proper use, and shall operate the Equipment strictly in accordance with any instruction provided by the Agent; and
- (b) will use the Equipment solely for the Client's own work, and shall not permit the Equipment or any part thereof to be used by any other party for any other work, without the express written permission of the Agent; and
- (c) agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations in regard to its operation, maintenance and storage, whether supplied by the Agent or posted on the Equipment; and
- (d) agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations; and
- (e) shall ensure that the Equipment is returned to the Agent in good working order and clean of all foreign matters. The Client's failure to adhere to this clause shall incur additional charges as per clause 5.1(c).

8.2 In the event of "wet" hire of the Equipment, the operator shall remain an employee of the Agent and will operate the Equipment in accordance with the Client's instructions. As such the Agent shall not be liable for any actions of the operator in following the Client's instructions.

9 Client's Warranties

9.1 The Client warrants that:

- (a) the Client will not conceal, alter or make any additions or alterations to the Equipment, including (but without limitation) tampering, repairing, modifying, defacing or erasing any identifying mark, plate or number on or in the Equipment, or in any other manner interfere with the Equipment, and shall not permit any other person or party to do so; and
- (b) the Client will not use the Equipment, nor permit it to be used, in such a manner as would permit an insurer to decline any claim (including, but not limited to, using the Equipment for any illegal purpose, etc.); and
- (c) the Equipment shall be kept in the Client's own possession and control, and the Client:
 - (i) shall not assign the benefit of this hire contract, nor be entitled to take a lien, or grant any encumbrance over the Equipment; and
 - (ii) will not remove the Equipment from the nominated address without the prior written approval of the Agent.
- (d) the Equipment will be returned to the Agent in good working condition, to the Agent's premises and by the return date, as agreed. The Client must notify the Agent in writing of (and the Agent may, at its sole discretion, agree to) any request for extension to the Hire Term in advance of the agreed return date. If the Client fails to return the Equipment to the Agent by the agreed return date, the Equipment will be reported to the Police as having been stolen.

10 Title

10.1 The Equipment is and will at all times remain the absolute property of the Agent. However, all risk for the Equipment passes to the Client on Delivery, and the Client:

- (a) accepts full responsibility for the safekeeping of the Equipment and indemnifies the Agent for all loss, theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Client; and
- (b) will insure, or self-insure, the Agent's interest in the Equipment against physical loss or damage (including, but not limited to, the perils of accident, fire, theft and burglary) and all other usual risks, and will effect adequate public liability insurance covering any loss, damage or injury to property arising out of the use of the Equipment; and
- (c) accepts full responsibility for, and shall keep the Agent indemnified against, all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the

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- Equipment during the Hire Term, and whether or not arising from any negligence, failure or omission of the Client or any other persons; and
- (d) is not authorised to pledge the Agent's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs; and
 - (e) must return the Equipment to the Agent upon request to do so; and
 - (f) shall not agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let or hire, or otherwise part with, or attempt to part with, personal possession of, or otherwise not to deal with, the Equipment.
- 10.2 It is further agreed that until such time as ownership of any consumables shall pass from the Agent to the Client in accordance with clause 4.7:
- (a) the Client is only a Bailee of the consumables and the Agent may give notice in writing to the Client to return the consumables (or any of them) to the Agent. Upon such notice the rights of the Client to obtain ownership or any other interest in the consumables shall cease; and
 - (b) the Client holds the benefit of the Client's insurance of the consumables on trust for the Agent, and must pay to the Agent the proceeds of any insurance in the event of the consumables being lost, damaged or destroyed; and
 - (c) the Client must not sell, dispose, or otherwise part with possession of the consumables other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the consumables, then the Client must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand; and
 - (d) the Agent may commence proceedings to recover the cost of the consumables, notwithstanding that ownership of the consumables has not passed to the Client.
- 10.3 Notwithstanding anything else herein contained, the Agent, or any authorised agent of the Agent, may at any time (as the invitee of the Client) enter upon and into any premises where the Equipment is located to exercise any rights they have under this contract or at law, including (if the need arises), the right to repossess the Equipment from the relevant premises, without being responsible for any damage thereby caused, in the event the Client is in breach of any obligation (including those relating to payment) under this contract, or the Agent believes (in its sole opinion) the Equipment is being misused, used in contravention of any law, has been abandoned, or is at risk in any other way whatsoever, and:
- (a) the Client agrees to obtain all necessary consents from the owner, occupier and other interested parties (such as any mortgagee) of the relevant premises where the Equipment is located to enable the Agent to do this; and
 - (b) any costs incurred by the Agent as a result of so repossessing the Equipment shall be charged to the Client; and
 - (c) the Agent shall only charge the Client for the Hire Charges up to and including the time of repossession; and
 - (d) in addition to the Agent's right to repossess the Equipment, the Agent is entitled, at its sole discretion, following any breach of any provision of this contract by the Client, to terminate this contract and/or sue for recovery of any damages or charges or loss suffered by the Agent, and/or to cancel any insurances effective in respect of the hired Equipment.
- 11 Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause the terms: financing statement, financing change statement, security agreement, and security interest have the meaning given to them by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment, and/or any monetary obligation of the Client to the Agent for any services, previously supplied (if any), or that will be supplied in the future, by the Agent to the Client.
- 11.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 11.2(a)(i) or 11.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Agent;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Agent;
 - (e) not, without giving the Agent fourteen (14) days' prior notice, change their name, ABN or any other identifier required to be recorded on the PPSR in connection with any security interest arising under this contract.
- 11.4 The Agent and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Agent, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by the Agent under clauses 11.2 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 11.10 Only to the extent that the hire of the Equipment exceeds a Hire Term of six (6) months (with the right of renewal) shall this clause 11 apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 20.

12 Security and Charge

- 12.1 In consideration of the Agent agreeing to supply Equipment the Client:
- (a) charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money); and
 - (b) indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause; and
 - (c) irrevocably appoints the Agent and each director of the Agent as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12, including, but not limited to, signing any document on the Client's behalf.

13 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 13.1 The Client must inspect the Equipment on Delivery and must within forty-eight (48) hours of such time notify the Agent in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quotation. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Agent to inspect/review the Equipment.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (“Non-Excluded Guarantees”).
- 13.3 The Agent acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Agent makes no warranties or other representations under these terms and conditions including but not limited to the condition, quality or suitability of the Equipment for any particular purpose. The Agent’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, the Agent’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If the Agent is required to repair, re-supply, or pay the cost of re-supplying any Equipment under this clause or the CCA, but is unable to do so, then the Agent may refund any money the Client has paid for the hire of the Equipment but only to the extent that such refund shall take into account the value of the hired Equipment which were not defective, and such refund shall only be applicable for the residual proportion of the Hire Term for the defective Equipment.
- 13.7 If the Client is not a consumer within the meaning of the CCA, the Agent’s liability for any defect or damage in the Equipment is:
- (a) limited to the value of any express warranty provided to the Client by the Agent (at the Agent’s sole discretion); or
 - (b) otherwise negated absolutely.
- 13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, the Agent shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client’s failure to comply with any of their obligations under this contract; or
 - (b) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user; or
 - (c) the Client failing to follow any instructions or guidelines provided by the Agent; or
 - (d) fair wear and tear, any accident, or act of God.

14 Loss, Damage or Breakdown of the Equipment

- 14.1 The Client shall notify the Agent immediately (by telephone) of the full circumstances of any mechanical breakdown, failure or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
- 14.2 Immediately on request by the Agent, the Client will pay the new list price of any Equipment that is, for whatever reason, destroyed, written off or not returned to the Agent.

15 Cancellation

- 15.1 The Agent may cancel these terms and conditions, or cancel Delivery at any time before the Equipment is delivered, by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Hire Charges. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels this contract, or Delivery, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).

16 Termination

- 16.1 Without prejudice to any other remedies the Agent may have against the Client, and notwithstanding the Hire Term, this contract may be terminated by the Agent:
- (a) upon giving the Client twenty-four (24) hours verbal notice of termination at any time during the Hire Term; or
 - (b) without notice, and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
 - (i) any money payable to the Agent becomes overdue, or in the Agent’s opinion the Client will be unable to meet its payments as they fall due; or
 - (ii) the Client 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
 - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
 - (iv) the Client commits a breach of any part of this contract.

17 Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Agent’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Agent any money, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent’s contract default fee, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire the Agent may repossess the Equipment as per clause 10.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.

18 Privacy Act 1988

- 18.1 The Client agrees for the Agent to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Agent.
- 18.2 The Client agrees that the Agent may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and
 - (b) to notify other credit providers of a default by the Client; and
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and

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- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.3 The Client consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Client agrees that personal credit information provided may be used and retained by the Agent for the following purposes (and for other agreed purposes or required by):
- (a) the supply of Equipment; and
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the supply of Equipment; and
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 18.5 The Agent may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above; and
 - (b) name of the credit provider and that the Agent is a current credit provider to the Client; and
 - (c) whether the credit provider is a licensee; and
 - (d) type of consumer credit; and
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); and
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Agent has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); and
 - (g) information that, in the opinion of the Agent, the Client has committed a serious credit infringement; and
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Client shall have the right to request (by e-mail) from the Agent:
- (a) a copy of the information about the Client retained by the Agent and the right to request that the Agent correct any incorrect information; and
 - (b) that the Agent does not disclose any personal information about the Client for the purpose of direct marketing.
- 18.8 The Agent will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Client can make a privacy complaint by contacting the Agent via e-mail. The Agent will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19 Force Majeure

- 19.1 Subject to clause 19.2, neither party shall be liable for any default due to causes beyond their control (including, but not limited to, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of, or inability to obtain shopping space, or land transportation).
- 19.2 Nothing in clause 19.1 will limit or exclude the Client's responsibility and liability under this contract for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Term, or had broken down, or become unsafe to use as a result of the Client's conduct or negligence.

20 General

- 20.1 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the State in which the Agent has its principal place of business, and are subject to the jurisdiction of the courts in that State.
- 20.3 Subject to clause 13, the Agent shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Hire Charges).
- 20.4 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.5 The Client agrees that the Agent may amend these terms and conditions at any time. If the Agent makes a change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Agent to supply any Equipment to the Client.
- 20.6 The Client warrants that:
- (a) it is not insolvent and that this contract creates binding and valid legal obligations on it; and
 - (b) the person signing any document which forms part of this contract for and on behalf of the Client has the power to enter into this contract on the Client's behalf and grant the security interest in connection with it, and has obtained all necessary authorisations to allow it to do so.
- 20.7 The covenants, agreements and obligations contained in this contract will not merge or terminate upon the termination of this contract, and to the extent that they have not be fulfilled or satisfied, or are continuing obligations, they will remain in force and effect.

21 Trusts and Incorporated Associations

- 21.1 If the Client is upon, or subsequent to, entering in to the contract acting in the capacity of trustee of any trust (including any incorporated association), then whether or not the Agent may have notice thereof, the Client covenants with the Agent as follows:
- (a) the contract extends to all rights of indemnity which the Client now has, or subsequently may have, against the trust (and the trust fund); and
 - (b) the Client has full and complete power and authority under the trust to enter into the contract, and the provisions of the trust do not purport to exclude or take away the right of indemnity of the Client against the trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust, or be a party to any other action which might prejudice that right of indemnity; and
 - (c) the Client will not, without consent in writing of the Agent (which will not be unreasonably withheld), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the trust; or

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- (ii) any alteration to, or variation of, the terms of the trust; or
- (iii) any advancement or distribution of capital of the trust; or
- (iv) any resettlement of the trust property.