

Assassin Jettors - Terms & Conditions of Hire

1. Definitions

- 1.1 **"Charges"** means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between the Supplier and the Customer subject to clause 6 of this Contract.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.6 **"Equipment"** means all Equipment (including any accessories) supplied on hire by the Supplier to the Customer (and where the context so permits shall include any incidental supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Customer.
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Customer.
- 1.9 **"Site"** means the location/s at which the Equipment is to be operated.
- 1.10 **"Supplier"** means Mustang Nozzles Pty Ltd ATF Mustang Nozzles Trust T/A Assassin Jettors, its successors and assigns or any person acting on behalf of and with the authority of Mustang Nozzles Pty Ltd ATF Mustang Nozzles Trust T/A Assassin Jettors.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the hire of Equipment on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.
- 2.5 In the event that the hire of Equipment requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Equipment hire and/or services.
- 3.2 In circumstances where the Customer is required to place an order for the Equipment, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Equipment ("**Customer Error**"). The Customer must pay for all Equipment it orders from the Supplier notwithstanding that such Equipment suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Equipment. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

4. Change in Control

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

5. Credit Card Information

- 5.1 The Supplier will:
(a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Supplier;

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- (b) not disclose the Customer's credit card details to any third party; and
(c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 18) or where required by law.
- 5.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Customer which were not known at the time of the return of the Equipment, the Supplier is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.
- 6. Charges and Payment**
- 6.1 At the Supplier's sole discretion, the Charges shall be either;
(a) as indicated on invoices provided by the Supplier to the Customer upon placement of an order for the hire of the Equipment; or
(b) the Supplier's quoted Charges (subject to clause 6.2) which shall be binding upon the Supplier provided that the Customer shall accept in writing the Supplier's quotation within thirty (30) days.
- 6.2 The Supplier reserves the right to change the Charges in the event of a variation to the Supplier's quotation. Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 6.3 At the Supplier's sole discretion, a reasonable deposit (in the form of a bond) shall be required at the commencement of this Contract in accordance with any quotation provided by the Supplier or as notified to the Customer prior to the placement of an order for the Equipment, which shall be refunded to the Customer by within thirty (30) days of the return of the Equipment, provided that the Customer has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Customer under clause 14.3, and any outstanding balance thereof shall be due as per clause 6.4.
- 6.4 Time for payment for the Equipment being of the essence, the Charges will be payable by the Customer on the date/s determined by the Supplier, which may be:
(a) on or before delivery of the Equipment; or
(b) due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.
- 6.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Customer and the Supplier.
- 6.6 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Customer's account into default and subject to default interest in accordance with clause 16.1.
- 6.8 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 6.9 Receipt by the Supplier 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.
- 7. Hire Period**
- 7.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 7.2 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment departs from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 7.3 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 7.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Supplier immediately, hiring 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 Customer.
- 7.5 Off-hire receipts will only be issued when the Equipment has been either collected by the Supplier or returned to the Supplier's premises.
- 8. Delivery**
- 8.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Equipment at the Supplier's premises; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.

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- 8.2 The cost of Delivery will be payable by the Customer in accordance with the quotation provided by the Supplier to the Customer, or as otherwise notified to the Customer prior to the placement of an order for the Equipment.
- 8.3 The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by the Supplier for Delivery of the Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer 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 Supplier is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

9. Risk

- 9.1 The Supplier retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.
- 9.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier 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 Customer.
- 9.3 The Customer will insure, or self-insure, the Supplier'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 Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 9.4 The Customer accepts full responsibility for and shall keep the Supplier 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 Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

10. Title

- 10.1 The Equipment is and will at all times remain the absolute property of the Supplier, and the Customer must return the Equipment to the Supplier upon request to do so.
- 10.2 If the Customer fails to return the Equipment to the Supplier as is required under this Contract or when requested to do so, then the Supplier or the Supplier's agent may (as the invitee of the Customer) enter upon and into any land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by the Supplier as a result of the Supplier so repossessing the Equipment shall be charged to the Customer.
- 10.3 The Customer is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer 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 that has previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 11.3 The Customer 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 Supplier 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 11.3(a)(i) or 11.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier 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 Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (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 Supplier.
- 11.4 The Supplier and the Customer 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 Customer 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 Customer 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 Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 11.3 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 two (2) year hire period with the right of renewal shall clause 11 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.

12. Security and Charge

- 12.1 In consideration of the Supplier agreeing to supply the Equipment on hire, the Customer grants the Supplier a security interest by way of a floating charge (registerable by the Supplier pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether

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joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment on hire under this Contract and/or permit the Supplier to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).

12.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

12.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 10.1, 11.2 and 12.1 as applicable, is deemed insufficient by the Supplier to secure the repayment of monies owed by the Customer to the Supplier, the Customer hereby grants the Supplier a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

13.1 The Customer must inspect the Equipment on Delivery and must within forty-eight (48) hours of Delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect 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 Supplier 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 Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

13.6 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Customer has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Customer which were not defective.

13.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the services or Equipment is:

- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
- (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Equipment;
- (c) otherwise negated absolutely.

13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, the Supplier 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 Customer failing to properly maintain or store any Equipment;
- (b) the Customer interfering with the Equipment in any way without the Supplier's written approval to do so;
- (c) the Customer using the Equipment for any purpose other than that for which it was designed;
- (d) the Customer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (e) the Customer failing to follow any instructions or guidelines provided by the Supplier;
- (f) fair wear and tear, any accident, or act of God.

14. Customer's Responsibilities

14.1 The Customer shall:

- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (c) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
- (e) ensure that:
 - (i) all persons driving and/or operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to the Supplier upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
- (f) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Supplier relating to any such matters or occurrences;
- (g) comply with all work health and safety laws relating to the Equipment and its operation;
- (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier (or the Supplier's designated employee);
- (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;

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- (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment, or grant any encumbrance over the Equipment;
 - (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (l) indemnify and hold harmless the Supplier in respect of all claims arising out of the Customer's use of the Equipment.
- 14.2 The Customer shall not:
- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (b) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
 - (c) carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of the Supplier;
 - (d) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (e) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 14.3 Immediately on request by the Supplier the Customer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Customer or the Customer's agent;
 - (iii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
 - (d) the cost of fuels and consumables provided by the Supplier and used by the Customer;
 - (e) any:
 - (i) lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by the Supplier in picking up and returning the Equipment to the Supplier's premises if the Customer does not return the Equipment to the Supplier's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (iii) insurance excess payable in relation to a claim made by either the Customer or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Supplier's.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of Equipment on hire to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 15.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Equipment to the Customer, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Equipment at any time before the Equipment are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Equipment to be hired. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 The Customer may cancel Delivery of the Equipment by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels Delivery in accordance with this clause 15.3, the Customer will not be liable for the payment of any costs of the Supplier, except where a deposit is payable in accordance with clause 6.3. Failure by the Customer to otherwise accept Delivery of the Equipment shall place the Customer in breach of this Contract.
- 16. Default and Consequences of Default**
- 16.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes the Supplier any money, the Customer shall indemnify the Supplier from and against all costs and disbursements:
 - (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;in regard to legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under these terms and conditions, internal administration fees, the Supplier's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 16.3 Further to any other rights or remedies the Supplier may have under this Contract, if the Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 16.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer has exceeded any applicable credit limit provided by the Supplier;
 - (c) the Customer 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

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(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Compliance with Laws

17.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

18. Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")

If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

18.3 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.

18.4 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

18.5 The Customer consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

18.6 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Equipment; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Equipment.

18.7 The Supplier may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

18.8 The information given to the CRB may include:

- (a) Personal Information as outlined in 18.3 above;
- (b) name of the credit provider and that the Supplier is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), 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 Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

18.9 The Customer shall have the right to request (by e-mail) from the Supplier:

- (a) a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
- (b) that the Supplier does not disclose any Personal Information about the Customer for the purpose of direct marketing.

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- 18.10 The Supplier will destroy Personal Information upon the Customer'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.
- 18.11 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Service of Notices

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Trusts

- 20.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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 Customer against the Trust, the trustees and the trust fund. The Customer 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;
 - (c) the Customer will not during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales the state in which the Supplier has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 21.3 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 21.4 The Customer cannot assign or licence without the written approval of the Supplier.
- 21.5 The Supplier may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 21.6 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Equipment on hire to the Customer.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Supplier, once the parties agree that the Force Majeure event has ceased.
- 21.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 21.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 21.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.