WindRiver Pty Ltd T/A Healesville HIRE – Terms & Conditions

1. Definitions

1.1 "Healesville HIRE" means WindRiver Pty Ltd ATF Oude-Meilink Family Trust T/A Healesville HIRE, its successors and assigns or any person acting on behalf of and with the authority of WindRiver Pty Ltd ATF Oude-Meilink Family Trust T/A Healesville HIRE.

1.2 "Client" means the person/s requesting Healesville HIRE to supply the Equipment and/or Services as specified in any invoice, document or order, and if there more than one person requesting the Equipment and/or Services is a reference to each person jointly and severally.

1.3 "Equipment" means all Equipment (including, but not limited to trailers, Equipment, lawnmowers, hand tools and any accessories (where applicable)) supplied on hire by Healesville HIRE to the Client (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 authorisation forms as provided by Healesville HIRE to the Client.

1.4 "Services" means any Services supplied by Healesville HIRE to the Client (either independently or in conjunction with Equipment), at the Client's request from time to time.

1.5 "Charges" means the price for the hire of the Equipment and/or supply of the Services, as agreed between Healesville HIRE and the Client subject to clause 4 of this contract.

1.6 "Dry Hire" means that the Equipment is supplied by Healesville HIRE without an operator.

1.7 "Wet Hire" means that the Equipment is supplied by Healesville HIRE with an operator, who shall at all times remain an employee or representative of Healesville HIRE.

1.8 "Site" means the location/s at which the Equipment is to be erected and/or to be delivered by way of the hired Equipment.

1.9 "Minimum Hire Period" means the Equipment shall be hired for a term of not less than two (2) weeks (or unless specified otherwise on the invoices, quotation, authority to hire, or any other forms as provided by Healesville HIRE to the Client).

1.10 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

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 and/or Services, or accepts Delivery. The Client must provide Healesville HIRE with a purchase order stating the date, time and Equipment required in order to secure, the availability of the Equipment when required.

2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Healesville HIRE.

2.3 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of Healesville HIRE, which may be arbitrarily withheld.

2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 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 Healesville HIRE 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, Client contact practice). The Client shall be liable for any loss incurred by Healesville HIRE as a result of the Client's failure to comply with this clause.

4. Charges and Payment

4.1 At Healesville HIRE's sole discretion the Charges shall be either:
(a) as indicated on invoices provided by Healesville HIRE to the Client in respect of Equipment and/or Services supplied; or
(b) the Charges as at the date of Delivery, according to Healesville HIRE's current schedule of rates; or
(c) Healesville HIRE's quoted Charges (subject to clause 4.2), which may be subject to a site inspection, and shall be binding upon Healesville HIRE provided that the Client shall accept Healesville HIRE's quotation in writing within thirty (30) days.

4.2 Healesville HIRE reserves the right to change the Charges if a variation to Healesville HIRE's quotation is requested. Any variation from the plan of scheduled Services and/or specifications of the Equipment (including, but not limited to, variations to costs, preparation of information (such as calculations, computations and fees incurred for site inspections by engineers – including an Engineer's Certificate – or inspectors), where Healesville HIRE is required to supply hoardings, overhead protection, shade cloth or chain wire, additional transport costs including where required out of normal working hours, or where Delivery (including unloading and/or loading) exceeds the allowance thereof), any variation as a result of unforeseen circumstances, such as poor weather conditions, limitations to accessing the site and safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, any relocation and/or alteration to working platforms, ties and/or hop up brackets (or the Equipment entirely), or as a result of any increase to Healesville HIRE in the cost of materials and labour, or any Government or regulatory body imposing or increasing fees – such as Stamp Duty, Goods and Services Tax or Sales Tax, etc.) will be charged for on the basis of Healesville HIRE's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At Healesville HIRE's sole discretion, a non-refundable deposit may be required.

4.4 Time for payment of the Charges shall be of the essence, and will be payable by the Client on the date/s determined by Healesville HIRE, which may be:
(a) on Delivery;
(b) before Delivery;
(c) by way of instalments/progress payments in accordance with Healesville HIRE's payment schedule;
(d) the date specified on any invoice or other form as being the date for payment; or
(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Healesville HIRE.

4.5 Payment will be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction) or by any other method as agreed to between the Client and Healesville HIRE.

4.6 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to Healesville HIRE an amount equal to any GST Healesville HIRE must pay for any supply of Equipment and/or Services by Healesville HIRE under this or any other agreement. 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 Charges. In addition the Client 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.

4.7 No allowance has been made in the Charges for the deduction of retentions. In the event that retentions are made, Healesville HIRE reserves the right to treat all retentions as placing the Client's account into default.

4.8 The Client acknowledges and agrees that the Client's obligations to Healesville HIRE under this agreement shall not cease until:
(a) the Client has paid Healesville HIRE all amounts owing for the supply of the Equipment and/or Services; and
(b) the Client has met all other obligations due by the Client to Healesville HIRE in respect of all contracts between Healesville HIRE and the Client.

4.9 Receipt by Healesville HIRE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Healesville HIRE's ownership or rights in respect of the Equipment and/or Services, and this agreement, shall continue.

5. Delivery

5.1 Delivery of the Equipment and/or Services ("**Delivery**") is taken to occur at the time that Healesville HIRE (or Healesville HIRE's nominated carrier) delivers the Equipment and/or Services (in the case of Equipment, where it is installed and hand-over certificate is issued) to the Client's nominated address, even if the Client is not present at the address. In the event the Client (or a representative thereof) is not present at the time of Delivery, Healesville HIRE's delivery docket remains prima facie evidence of such.

5.2 Return of the Equipment ("**Return**") will be completed when the Equipment has been dismantled and accepted by Healesville HIRE, by their off-hire receipt.

5.3 At Healesville HIRE's sole discretion, the cost of Delivery and/or Return is either included in, or in addition to, the Charges.

5.4 Healesville HIRE may deliver the Equipment and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

5.5 Any time specified by Healesville HIRE for Delivery, Return and any other Services are an estimate only and Healesville HIRE will not be liable for any loss or damage incurred by the Client as a result of any delay (including where due to inclement weather). However both parties agree that they shall make every endeavour to enable the Equipment and/or Services to be supplied at the time and place as was arranged between both parties. In the event that Healesville HIRE is unable to supply the Equipment and/or Services as agreed solely due to any action or inaction of the Client then Healesville HIRE shall be entitled to charge a reasonable fee for re-supplying the Equipment and/or Services at a later time and date.

6. Equipment Hire

6.1 Hire Period
(a) Charges shall commence from the time of Delivery and continue until Return, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
(b) Returns:
(i) The Client must provide Healesville HIRE with two (2) full working days' notice that the Equipment is available for collection. The date upon which the Client advises of such shall in all cases be treated as a full day's hire.
(ii) The Return to Healesville HIRE's premises must be completed during normal business hours.
(iii) In the event the Equipment is not returned to Healesville HIRE by the end of the specified hire period, the Client will be charged at Healesville HIRE's then current weekly rate until such time as the Equipment is returned.
(iv) The Client must not submit the Equipment for Return if it has not been cleaned of all asbestos fibres and other hazardous particles or substances (including mortar, render, epoxy or other applied finishes).
(c) No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless Healesville HIRE confirms special prior arrangements in writing. In the event of Equipment malfunction, provided the Client notifies Healesville HIRE immediately, 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 or attributable to the Client.
(d) As per AS/NZS 4576:1995 Section 13.2, a monthly inspection of the Equipment (scaffolding) will be undertaken by Healesville HIRE, and charged additionally to the Client at Healesville HIRE's current day labour rates. Notwithstanding this clause, Healesville HIRE retains the right at all times during the hire period to inspect the Equipment wherever it may be.

6.2 Risk
(a) The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Healesville HIRE for all loss theft or damage thereto 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.
(b) The Client will insure, or self-insure, Healesville HIRE'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 affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the use of the Equipment. Further 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.
(c) The Client accepts full responsibility for and shall keep Healesville HIRE 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 Client or any other persons.
(d) Any damages incurred due to bad weather, high winds, etc. will not be the responsibility of Healesville HIRE. Equipment boards can be tied down individually at the Client's request, and will be charged additionally to the Client.

6.3 Access and Installation of Scaffolding
(a) Unless otherwise stated in writing, the Equipment will be installed and/or dismantled in one continuous operation, during Healesville HIRE's normal work hours.
(b) The Client shall provide:
(i) clear and free access/egress to the immediate vicinity of the work area (including sufficient clearance), and a storage area therein, to enable Delivery, installation and/or collection. Should traffic management be required, it must be organised by the Client at no cost to Healesville HIRE;
(ii) a clear work area two and a half metres (2.5m) in width from the workface, which is reasonably level and properly compacted. If installation is to be carried out on an existing structure, the Client must ensure (in consolidation with the site manager) that the structure is capable of supporting the additional loads to be imposed, prior to Delivery and/or installation;
(iii) site amenities (including, where necessary, sufficient and safe power supply, P.P.E – such as harness, first aid kit, etc.), and, unless otherwise stated in Healesville HIRE's quotation, to inspect and erect and dismantle (to raise/lower materials to and from the work area).
(c) It is the responsibility of the Client to:
(i) ensure that Work Cover Authority requirements are met, regarding isolation of power lines and fluorescents being sound, and obtain (at the expense of the Client) all licenses, permits and/or approvals that may be required for the Equipment;
(ii) ensure that false work/formwork does not project in such a way as to interfere with the installation of the Equipment;
(iii) ensure that all unused material and waste removed from the working platforms and storage area, prior to the performance of installation and/or dismantle services. Time lost due to delays whilst waiting for the work area to be cleared will be charged in addition to the Charges at Healesville HIRE's current and relevant hourly rate;
(iv) ensure that there are adequate instructions for the Equipment and that Healesville HIRE's employees are instructed on the exact location of the Equipment (including the distance from formwork, wall, etc.).
(d) Equipment will be installed, altered and dismantled in accordance with the drawings provided, which will comply with AS1576, Parts 1, 2,3 and 4, and AS/NZS 4567:1995 – Guidelines for Equipment.
(e) Healesville HIRE is required by law to provide a Handover Certificate. The signature of the Client (or their representative) will be required prior to handover of the completed Services. Even where the Services are complete, Healesville HIRE is required to handover as incomplete.
(f) Only by the express written approval of Healesville HIRE shall the Client be entitled to modify or remove the Equipment (including, but not limited to, alterations to ties). If, during the hire period, the Equipment is modified or removed by persons other than Healesville HIRE to the extent that it no longer complies with the Constructions Safety Act and Regulation, Healesville HIRE will not be held liable and any rectification shall be charged additionally to the Client.

6.4 Title
(a) The Equipment is and will at all times remain the absolute property of Healesville HIRE.
(b) If the Client fails to return the Equipment to Healesville HIRE then Healesville HIRE or Healesville HIRE's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
(c) The Client is not authorised to pledge Healesville HIRE's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

6.5 Client's Responsibilities
(a) The Client shall:
(i) inspect the Equipment every seven (7) days, and immediately after severe storms or other adverse conditions;
(ii) maintain the Equipment as is required by Healesville HIRE;
(iii) provide Healesville HIRE a minimum of three (3) full working days' notice to arrange for the installation, dismantle or alteration to Equipment. The Client will be charged for any dismantle of the Equipment by any other party;
(iv) notify Healesville HIRE immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
(v) satisfy itself on provision of the Equipment that the Equipment is suitable for its purposes;
(vi) use the Equipment safely and in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Healesville HIRE or posted on the Equipment;
(vii) ensure that all persons using the Equipment are suitably instructed in its safe and proper use;
(viii) comply with all work health and safety laws (WHS) relating to the Equipment and its use;
(ix) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
(x) not alter or make any additions to the Equipment, including but without limitation defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
(xi) employ the Equipment solely in its own work and not permit the Equipment, of any part thereof, to be used by any other party for any other work;
(xii) ensure all overhead power likely to cause a hazard or adversely affect the installation of Equipment is turned off prior to the installation of the Equipment;
(xiii) ensure that no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed
(xiv) not exceed the recommended or legal load and capacity limits of the Equipment;
(xv) not use any illegal, prohibited or dangerous substance on the Equipment;
(xvi) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
(xvii) on determination of the hire, deliver up the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Healesville HIRE.
(b) Immediately on request by Healesville HIRE the Client will pay:
(i) the new list price of any Equipment, accessories or consumables that are lost or whatever reason destroyed, written off or not returned to Healesville HIRE;
(ii) all costs incurred in cleaning the Equipment;
(iii) all costs of repairing any damage caused by:
(a) wilful or negligent actions of the Client or the Client's employees;
(b) vandalism, or (in Healesville HIRE's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
(iv) any lost hire fees Healesville HIRE would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
(v) any insurance excess payable in relation to a claim made by either the Client or Healesville HIRE 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 Healesville HIRE's.

6.6 Defects
(a) Notwithstanding clauses 9.1 to 9.7, but subject to the CCA, Healesville HIRE shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
(i) the Client failing to properly maintain or store the Equipment;
(ii) the Client interfering with the Equipment in any way without Healesville HIRE's written approval to do so;
(iii) the Client using the Equipment for any purpose other than that for which it was designed;
(iv) 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;
(v) the Client failing to follow any instructions or guidelines provided by Healesville HIRE;
(vi) fair wear and tear, any accident, or act of God.

7. Wet Hire

7.1 Unless otherwise agreed to in writing between the parties, Healesville HIRE shall not be deemed the principal contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliancy under any relevant legislation or policy, etc.).

7.2 The Client shall:
(a) be responsible for ensuring that Healesville HIRE is notified of the location of any underground services on the Site; and
(b) provide amenities and first aid services to Healesville HIRE's employees in compliance with all applicable health and safety legislation in operation in the state where the services are undertaken; and
(c) should it be necessary for the Plant to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Plant, and said costs shall be in addition to the Charges; and

7.3 Notwithstanding that the operator of the Plant is an employee or representative of Healesville HIRE, the operator shall operate the Plant in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.

7.4 In the event the Client requires an employee of Healesville HIRE to undertake a Site induction during working hours, the Client will be liable to pay the hourly Charges for that period, notwithstanding that the Plant is not being operated during such time. If any induction is undertaken outside of the Hire Period then the Client shall be liable to pay Healesville HIRE standard (and/or overtime, if applicable) hourly labour rate.

8. Dry Hire

8.1 The Client shall ensure that the Plant is operated by a properly experienced and qualified person in accordance with Healesville HIRE's and manufacturer's requirements and/or recommendations.

9. Defects, Errors or Omissions, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

9.1 The Client must inspect the Equipment and/or Services on Delivery and must within seven (7) days of such time notify Healesville HIRE in writing of any patent defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment and/or Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Healesville HIRE to inspect/review the Equipment and/or Services.

9.2 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**").

9.3 Healesville HIRE acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

9.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Healesville HIRE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment and/or Services. Healesville HIRE's liability in respect of these warranties is limited to the fullest extent permitted by law.

9.5 If the Client is a consumer within the meaning of the CCA, Healesville HIRE's liability is limited to the extent permitted by section 64A of Schedule 2.

9.6 If Healesville HIRE is required to rectify, re-supply, or pay the cost of re-supplying the Equipment and/or Services under this clause or the CCA, but is unable to do so, then the owner may refund any money the Client has paid for the Equipment and/or Services but only to the extent that such refund shall take into account the value of Equipment and/or Services which have been supplied to the Client which were not defective.

9.7 If the Client is not a consumer within the meaning of the CCA, Healesville HIRE's liability for any defect or damage in the Equipment and/or Services is:
(a) limited to the value of any express warranty or warranty card provided to the Client by Healesville HIRE at Healesville HIRE's sole discretion;
(b) otherwise negated absolutely.

10. Intellectual Property and Confidentiality

10.1 The Client warrants that all designs, specifications or instructions given to Healesville HIRE will not cause Healesville HIRE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Healesville HIRE against any action taken by a third party against Healesville HIRE in respect of any such infringement.

10.2 Healesville HIRE and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in electronic form).

11. Healesville HIRE's Employees

11.1 The Client agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of Healesville HIRE (other than through Healesville HIRE) for a period of no less than twelve (12) months after that employee's last employment with Healesville HIRE.

11.2 The Client agrees that if clause 11.1 is contravened Healesville HIRE will be able to invoice the Client at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this contract.

12. Default and Consequences of Default

12.1 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 a half percent (2.5%) per month. The Client will be liable for Healesville HIRE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 If the Client owes Healesville HIRE any money the Client shall indemnify Healesville HIRE from and against all costs and disbursements incurred by Healesville HIRE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Healesville HIRE's contract default fee, and bank dishonour fees).

12.3 Further to any other rights or remedies Healesville HIRE may have under this contract, if a Client has made payment to Healesville HIRE, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Healesville HIRE under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

12.4 Without prejudice to any other remedies Healesville HIRE may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire Healesville HIRE may repossess the Equipment as per clause 6.4(b), or suspend or terminate the supply of Equipment and/or Services to the Client and any of its other obligations under the terms and conditions. Healesville HIRE will not be liable to the Client for any loss or damage the Client suffers because Healesville HIRE has exercised its rights under this clause.

12.5 Without prejudice to Healesville HIRE's other remedies at law Healesville HIRE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Healesville HIRE shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Healesville HIRE becomes overdue, or in Healesville HIRE's opinion the Client will be unable to make a payment when it falls due;
(b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Security and Charge

13.1 In consideration of Healesville HIRE agreeing to supply the Equipment and/or Services, the Client 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).

13.2 The Client indemnifies Healesville HIRE from and against all Healesville HIRE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Healesville HIRE's rights under this clause.

13.3 The Client irrevocably appoints Healesville HIRE and each director of Healesville HIRE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13.1 including, but not limited to, signing any document on the Client's behalf.

14. Cancellation

14.1 Healesville HIRE may cancel these terms and conditions or cancel the supply of Equipment and/or Services at any time before the Equipment and/or Services are delivered by giving written notice. On giving such notice Healesville HIRE shall repay to the Client any sums paid in respect of the Charges. Healesville HIRE shall not be liable for any loss or damage whatever arising from such cancellation.

14.2 In the event that the Client wishes to cancel this agreement then the Client shall be liable for any loss incurred by Healesville HIRE (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.

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

15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

15.2 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 collateral (account) – being a monetary obligation of the Client to Healesville HIRE for Services – that have previously been supplied, and that will be supplied in the future, by Healesville HIRE to the Client.

15.3 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 Healesville HIRE 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 15.3(a)(i) or 15.3(a)(ii);
(b) indemnify, and upon demand reimburse, Healesville HIRE 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 Healesville HIRE;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Healesville HIRE.

15.4 Healesville HIRE 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.

15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

15.7 Unless otherwise agreed to in writing by Healesville HIRE, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

15.8 The Client must unconditionally ratify any actions taken by Healesville HIRE under clauses 15.3 to 15.5.

15.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions in the PPSA.

15.10 Only to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall this clause 15 apply, and this agreement a security agreement for the purposes of PPSA generally, and in particular, section 36.

16. Privacy Act 1988

16.1 The Client agrees for Healesville HIRE 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 Healesville HIRE.

16.2 The Client agrees that Healesville HIRE 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/or
(b) to notify other credit providers of a default by the Client; and/or
(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/or
(d) to assess the creditworthiness of the Client including the circumstances of the Client in the preceding two years.

16.3 The Client consents to Healesville HIRE being given a consumer credit report to collect overdue payment on commercial credit.

16.4 The Client agrees that personal credit information provided may be used and retained by Healesville HIRE for the following purposes (and for other agreed purposes or required by):
(a) the provision of Equipment and/or Services; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment and/or Services; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Equipment and/or Services.

16.5 Healesville HIRE may give information about the Client 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 Client including credit history.

16.6 The information given to the CRB may include:
(a) personal information as outlined in 16.1 above;
(b) name of the current credit provider and that Healesville HIRE is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(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 sought);
(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 Healesville HIRE no longer has any overdue accounts and Healesville HIRE has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
(g) information that, in the opinion of Healesville HIRE, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

16.7 The Client shall have the right to request (by e-mail) from Healesville HIRE:
(a) a copy of the information about the Client retained by Healesville HIRE and the right to request that Healesville HIRE correct any incorrect information; and
(b) that Healesville HIRE does not disclose any personal information about the Client for the purpose of direct marketing.

16.8 Healesville HIRE will destroy personal information upon the Client's request if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

16.9 The Client can make a privacy complaint by contacting Healesville HIRE via e-mail. Healesville HIRE 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

17. General

17.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Healesville HIRE has its principal place of business, and are subject to the jurisdiction of the Melbourne Court in that state.

17.3 Subject to clause 7, Healesville HIRE shall be under no liability whatsoever to the Client (or any customer of the Client) for any indirect and/or consequential loss and/or expense (including loss of profit or anticipated sales, or on account of expenditures, investments, leases or other commitments relating to the business or goodwill of the Client) suffered by the Client arising out of a breach by Healesville HIRE of these terms and conditions (alternatively Healesville HIRE's liability shall be limited to damages which under no circumstances shall exceed the Charges).

17.4 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Healesville HIRE nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

17.6 The Client agrees that Healesville HIRE may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Healesville HIRE to provide Services and/or Equipment on hire to the Client.

17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

17.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

PLEASE NOTE: a larger print version of the Terms and Conditions is available from Healesville HIRE on request. ©Copyright - EC Credit Control 1999 - 2016-#34049