

WindRiver Pty Ltd T/A Healesville HIRE – Terms and 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 provide the Unit on hire, as specified in any agreement, invoice, document or order, and if more than one person, is a reference to each person jointly and severally.
 - 1.3 "Unit" means the storage space used by the Client to store goods, as supplied by Healesville HIRE.
 - 1.4 "Fees" means the periodic charges payable for the Client's use of the Unit, as agreed between Healesville HIRE and the Client in accordance with clause 4 of this agreement.
2. **Acceptance**
 - 2.1 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.
 - 2.2 The Client:
 - (a) 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, or accepts, the Unit supplied on hire by Healesville HIRE; and
 - (b) warrants that they are the rightful owner of the goods to be stored in the Unit; and
 - (c) acknowledges and agrees that this agreement does not create an interest in land and the Client has merely the right to store goods in the Unit allocated to the Client by Healesville HIRE for the term of this agreement; and
 - (d) are deemed to have knowledge of the goods stored in the Unit; and
 - (e) shall not be entitled to assign this agreement to any other person (or persons); and
 - (f) acknowledges that Healesville HIRE shall be entitled to enter the Unit at any time and by any method where required to by law or by any legal authority.
 - 2.3 Healesville HIRE:
 - (a) does not, and will not be deemed to, have knowledge of the goods stored in the Unit;
 - (b) is not a bailee or warehouseman of the goods, and the Client acknowledges that Healesville HIRE does not take possession of the goods (subject to clauses 7.3 and 8.4(b));
 - (c) reserves the right to relocate the Client to another unit under certain circumstances.
 - 2.4 If the Client requires the use of the Unit longer than any term specified above, a new Storage Agreement is to be completed with new terms of agreement.
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 numbers, business practice or persons authorised to access the Unit, etc.). 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. **Fees and Payment**
 - 4.1 The Fees (subject to clauses 4.2 and 4.3) shall be as detailed above and shall be payable monthly in advance, on the same calendar day as this agreement is dated.
 - 4.2 Healesville HIRE reserves the right to:
 - (a) change the Fees at any time by giving the Client not less than one (1) months' written notice; and
 - (b) charge the Client:
 - (i) a Cleaning Fee, where the Client has failed (in the opinion of Healesville HIRE) to adhere to clause 5.1(d); and
 - (ii) a Late Payment Fee, which shall become payable each time the Fees are not received by Healesville HIRE when they are due and payable; and
 - (iii) a dishonor fee where the Client's payment has been cancelled or reversed.
 - 4.3 The Client must pay to Healesville HIRE immediately upon acceptance of this agreement:
 - (a) the initial month's Fees; and
 - (b) a deposit, in the form of a Bond, which shall be refunded to the Client by cheque within thirty (30) days of termination of this agreement, provided that the Client has complied with their obligations hereunder; and
 - (c) an Admin Fee, at the sole discretion of Healesville HIRE.
 - 4.4 Payment may be made by cash, 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.
 - 4.5 Unless otherwise stated the Fees include GST. However, in addition the Client must pay other taxes and duties that may be applicable in addition to the Fees, except where they are expressly included in the Fees.
 - 4.6 The Client acknowledges and agrees that the Client's obligations to Healesville HIRE for the supply of the Unit on hire shall not cease until:
 - (a) the Client has paid Healesville HIRE all amounts owing for the use of the Unit; 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.
 - 4.7 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 Unit, and this agreement, shall continue.
5. **Access and Use of the Unit**
 - 5.1 The Client shall be entitled to access and use the Unit between the hours of 7am to 7pm daily, seven (7) days a week. Access outside these hours requires prior arrangement with Healesville HIRE; and
 - (a) a Pin Access Code will be provided at the commencement of the Hire period for the electronically controlled front gate which must be returned at the completion of the rental period;
 - (b) will be solely responsible for the securing of the Unit (including but not limited to, suitable padlocks), and shall secure the Unit at all times when the Client is not accessing/using the Unit, in a manner which is acceptable to Healesville HIRE; and
 - (c) must maintain the Unit by ensuring it is clean and in a state of good repair or a Cleaning Fee may be charged to the Client;
 - (d) must have consideration for other customers and neighbouring properties when accessing the Storage Premises, and in particular the Client must avoid excessive noise;
 - (e) shall:
 - (i) store or use in the Unit any goods that are inflammable, hazardous, illegal, stolen, explosive, environmentally harmful, wet, perishable, dangerous or that are a risk to the property of any person;
 - (ii) obstruct or interfere with the use of the storage facility by other customers;
 - (iii) use the Unit for any illegal or immoral purpose, or carry out any business activity at the storage facility;
 - (iv) carry out any alterations to the Unit, (including but not limited to, attaching nails, screws, etc. to any part of the Unit), or damage the Unit, without Healesville HIRE's prior written consent. In the event of damage to the Unit, Healesville HIRE shall be entitled to retain the Bond to the value of the repairs required;
 - 5.2 The Client acknowledges and agrees to comply with all relevant laws, including Acts, Ordinances, Regulations, By-laws and Orders, as are or may be applicable to the use of the Unit; this includes laws relating to the goods which are stored, and the manner in which they are stored. The liability for any (and all) breach of such laws rests absolutely with the Client, and includes any (and all) costs resulting from such breach. If Healesville HIRE has reason to believe that the Client is not complying with all relevant laws, Healesville HIRE may take any action they believe to be necessary to so comply, including the action outlined in clauses 5.4 and 7, and/or immediately dispose of, or remove, the goods at the Client's expense, and/or submit the goods to the relevant authorities. The Client agrees that Healesville HIRE may take such action at any time, even though Healesville HIRE could have acted earlier.
 - 5.3 Deliveries and removals from the Unit will not be permitted by any person other than the Client (and the Client's authorised persons as specified herein), unless the Client gives personal or telephone instruction to
- 3.4 The Client consents to inspection and entry of the Unit by Healesville HIRE, provided that Healesville HIRE give the Client seven (7) days written notice. In the event of an emergency that is where property, the environment or human life is, in Healesville HIRE's opinion, threatened, Healesville HIRE may enter the Unit using all necessary force without the written consent of the Client; but Healesville HIRE shall notify the Client as soon as practicable.
6. **Insurance and Indemnity**
 - 6.1 The goods are at all times stored at the Client's sole risk. Healesville HIRE shall not insure any goods kept on its premises and shall not be responsible for any damage to the goods stored in the Unit. It is the Client's responsibility to ensure that the goods stored in the Unit are insured against all possible damage (including, but not limited to, the perils of accident, fire, flood theft, burglary, leakage or overflow of water, heat, spillage of material from any other unit, removal or delivery of the goods, pest or vermin or any other reason whatsoever, including acts or omissions of Healesville HIRE or persons under its control, and all other usual risks) and deterioration.
 - 6.2 The Client agrees to use the Unit at their own risk and releases (to the full extent permitted by law) Healesville HIRE, its employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property arising out of the use of the Unit.
 - 6.3 Unless specifically covered by the Client's own insurance, the Client will not store goods which are irreplaceable, such as currency, jewellery, furs, deeds, paintings, curios, works of art and items of personal sentimental value.
7. **Expiry/Termination**
 - 7.1 The hire of the Unit shall continue until the Expiry Date (as specified herein) or where such date is not specified, will continue on a monthly basis, unless terminated by way of the either party providing the other with thirty (30) days written notice. Healesville HIRE shall be entitled to:
 - (a) retain a portion of the Bond if less than the requisite notice is given by the Client; and
 - (b) terminate this agreement without giving prior notice (but will send notice to the Client in writing within seven (7) days) if Healesville HIRE enters the Unit under clause 4 and there are no goods stored therein.
 - 7.2 Upon expiry/termination, the Client must:
 - (a) remove all goods from the Unit and leave the Unit in a clean condition, and in a good state of repair, to Healesville HIRE's satisfaction, on the specified date; and
 - (b) pay any outstanding monies and any expenses on default, or other monies owed to Healesville HIRE up to the date of termination, or clause 8 may apply.
 - 7.3 In the event of illegal or environmentally harmful activities on the part of the Client, Healesville HIRE may terminate this agreement without notice, and Healesville HIRE may advise the Client that unless the Client's goods are removed (within seven (7) days of the date of such advice) the property of the Client shall be forfeited to Healesville HIRE without payment or compensation. If the Client fails to comply with such notice, ownership of the Client's goods in the Unit shall immediately pass to Healesville HIRE.
8. **Default and Consequences of Default**
 - 8.1 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 calendar month (and at Healesville HIRE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 8.2 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 or a solicitor and own client basis, Healesville HIRE's contract default fee, and bank dishonour fees).
 - 8.3 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 8 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.
 - 8.4 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 and conditions:
 - (a) Healesville HIRE may refuse access to the Unit by the Client and/or enact their right to terminate this agreement under clause 7.1; and
 - (b) in the event the Fees (or any other monies owing) are not paid in full within forty-two (42) days of the due date for payment, Healesville HIRE may (without further notice) enter the Unit, retain the Bond and/or take possession and sell or dispose of any goods in the Unit on such terms that Healesville HIRE may determine. Healesville HIRE may also require the payment of any costs associated with the seizure of the Unit. Any excess monies recovered by Healesville HIRE on the disposal of the goods will be returned to the Client; and
 - (c) 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.
 - 8.5 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, 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;
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
9. **Personal Property Securities Act 2009 ("PPSA")**
 - 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
 - 9.2 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 goods of the Client (as stored in the Unit) for the purpose of securing any monetary obligation of the Client to Healesville HIRE for the hire of the Unit that has previously been supplied (if any), and that will be supplied in the future, by Healesville HIRE to the Client.
 - 9.3 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 sub-clauses (i) or (ii);
 - (b) indemnify, and upon demand reimburse, Healesville HIRE (if) 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 goods in favour of a third party without the prior written consent of Healesville HIRE.
 - 9.4 Healesville HIRE and the Client agree that sections 96, 116 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 9.7 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.
 - 9.8 The Client must unconditionally ratify any actions taken by Healesville HIRE under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the PPSA.
10. **Security and Charge**
 - 10.1 In consideration of Healesville HIRE agreeing to supply the Unit, 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).
 - 10.2 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.
 - 10.3 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 10 including, but not limited to, signing any document on the Client's behalf.
 11. **Privacy Act 1988**
 - 11.1 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.
 - 11.2 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 Client's repayment history in the preceding two (2) years.
 - 11.3 The Client consents to Healesville HIRE:
 - (a) being given a consumer credit report to collect overdue payment on commercial credit;
 - (b) discussing any default by the Client with any person/s authorised to access the Unit by the Client as identified herein.
 - 11.4 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 supply of the Unit on hire; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the supply of the Unit on hire; 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 hire of the Unit.
 - 11.5 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.
 - 11.6 The information given to the CRB may include:
 - (a) personal information as outlined in 11.1 above;
 - (b) name of the credit provider and 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 requested);
 - (f) advice of insurer 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 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).
 - 11.7 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.
 - 11.8 Healesville HIRE may request 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 agreement or is required to be maintained and/or stored in accordance with the law.
 - 11.9 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.
 12. **General**
 - 12.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
 - 12.2 All notices to be sent, by registered post, to the address of the other party. Either party may also communicate with the other over the telephone by first providing the Client's registered password. In the event of not being able to contact the Client, notice is deemed to be given to the Client by Healesville HIRE if Healesville HIRE serves that notice on any of the person/s authorised to access the Unit by the Client as identified herein.
 - 12.3 Both parties' liabilities for outstanding monies, property damage, personal injury, environmental damage and legal responsibility under this agreement continues to run beyond the termination of this agreement.
 - 12.4 No oral statements made by Healesville HIRE or its employees shall form part of this agreement. The failure by Healesville HIRE to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Healesville HIRE'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.
 - 12.5 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.
 - 12.6 Healesville HIRE 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 Healesville HIRE of these terms and conditions (alternatively Healesville HIRE's liability shall be limited to damages which under no circumstances shall exceed the Fees).
 - 12.7 The Client shall not be entitled to set off against, or deduct from the Fees, 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.
 - 12.8 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.
 - 12.9 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 Scaffolding on hire to the Client.
 - 12.10 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.
 - 12.11 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.