

HABITUAL EQUIPMENT TERMS OF LEASE

1. APPLICATION OF TERMS

- (1) If You do not accept these Terms, You must refrain from using the Website and from placing an Order for any Goods through the Website.
- (2) Subject to law:
 - (a) each offer or request made by You to Habitual Equipment for the lease of any Goods shall be deemed to be made subject to these Terms; and
 - (b) each lease of Goods by Habitual Equipment to You shall be deemed to be made in accordance with these Terms, despite any contrary provision in any offer or request made by You to Habitual Equipment, or otherwise.
- (3) Please read these Terms carefully before using the Website or placing an Order for Goods through the Website.
- (4) If You use the Website or undertake any activities through the Website, including hiring, any Goods through the Website, You will be deemed to have read, understood and accepted these Terms.

2. DEFINITIONS AND INTERPRETATION

- (1) Unless the context otherwise requires:
 - (a) references to a party to these Terms includes the executors, administrators, successors and permitted assigns of that party;
 - (b) references to any statute, ordinance or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
 - (c) words importing the singular include the plural and vice versa;
 - (d) words importing a gender include other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
 - (e) where any word or phrase is given a defined meaning in these Terms, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
 - (f) headings included in these Terms are for convenience only and must be disregarded in the construction of these Terms;
 - (g) a reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to these Terms;
 - (h) a reference to an agreement or document (including to this agreement) is to the agreement or document as amended, supplemented, novated or replaced;
 - (i) a reference to a person includes a firm, body corporate, association, trust, partnership, government or governmental body or other legal entity.
 - (j) where a word or phrase is defined in these Terms, other grammatical forms of that word or phrase have a corresponding meaning;

- (k) neither these Terms nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting or because a party relies on these Terms or any part of it to protect itself;
- (l) a reference to time is to Sydney time;
- (m) a reference to a body, whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body is a reference to the body that replaces it or that substantially succeeds that body;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any right, entitlement, benefit, agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a reference to dollars or \$ is to an amount in Australian currency unless denominated otherwise;
- (q) a reference after the words "include" or "for example" or similar expressions does not limit what else is included; and
- (r) if the day on which an action must be done under this agreement is not a Business Day, it must be done on or by the next Business Day.

(2) In these Terms:

"Account" means a personal account created by You on the Website;

"Business Day" means a day other than a Saturday, Sunday or public holiday in New South Wales;

"Business Hours" means the hours from 9.00am to 5.00pm on a Business Day;

"CC Act" means the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law contained in Schedule 2 thereof;

"CC Act Implied Term" means, in respect of any sale or supply of Goods by Habitual Equipment to You, any term, condition, consumer guarantee or warranty, for the benefit of You, implied by or arising under the CC Act in relation to that sale or supply of those Goods, or otherwise implied by any similar written or unwritten law of any State or Territory of Australia;

"Claims" includes actions, suits, causes of action, arbitration, debts, dues, costs, claims, demands, interest, verdicts and judgments at law or in equity or arising under the provisions of statute;

"Commencement Date" means the commencement date of the Lease being the Estimated Date of Delivery or, if it be a different date, the date of actual delivery or dated or deemed delivery of the Goods to you in accordance with clause 7(6);

"Corporations Act" means *Corporations Act 2001* (Cth);

"Delivery Charge" means the advertised delivery charge applicable to the delivery of a particular Good or Goods, as displayed in your shopping cart at the time of placing an order for Goods through the Website;

"Deposit" means an amount equivalent to one (1) month of Rent in respect of the Goods to be leased by Habitual Equipment to You under the Lease inclusive of GST, as shown on the Website as amended by Habitual Equipment from time to time, or in your shopping cart at the time of Your placing of an Order for Goods through the Website;

"Estimated Delivery Date" means the estimated delivery date in respect of Goods subject to an Order made by You, as displayed on the Website or in your shopping cart at the time of Your placing of an Order or as notified to You by Habitual Equipment after the time of Your placing of an order for Goods through the Website;

Event of Default means any event or circumstance set out in clause 19(1) of these Terms or otherwise specified as an "event of default" in these Terms or the Lease, or both.

"Expiry Date" means in relation to the Lease, the last day of the Lease Term as displayed on the Website or in your shopping cart at the time of Your placing of an Order;

"Force Majeure Event" means events or occurrences beyond the control of Habitual Equipment including:

- (a) war, terrorism, resolution, insurrection, riot or invasion;
- (b) interference by civil or military authorities;
- (c) earthquake, aircraft damage, fire, cyclones, lighting, winds or other acts of God;
- (d) compliance with Government laws, rules or regulations, delays in transit;
- (e) airport closure, airline strikes or airline industrial problems, tourist restrictions, pandemic, or any act of any government or government agency that materially affects the cost or grounding of types of aircraft used to transport goods;

"Goods" means the products leased by Habitual Equipment to You, the subject of an Order;

"GST" means the tax imposed or sought to be imposed by the GST Acts;

"GST Acts" means *A New Tax System (Goods and Services Tax) Act 1999* and related imposition Acts of the Commonwealth;

"Habitual Equipment" means Habitual Equipment Pty Limited A.C.N. 640 491 710;

"Indirect or Consequential Loss" includes lost revenues, lost profits, lost business, lost goodwill or anticipated savings, incidental, indirect, consequential, special, economic or punitive damages whether arising from or in connection with any breach of contract, negligence or any other cause of action in connection with or relating to these Terms or any sale or supply of Goods by Habitual Equipment to You;

"Lease" means the lease of Goods from Habitual Equipment to You on these Terms;

"Lease Term" means the term of the Lease commencing on the Commencement Date and ending on the Expiry Date;

"Nominated Address" has the meaning given in clause 7(6);

"Order" means an order placed by You with Habitual Equipment through the Website to lease Goods from Habitual Equipment on these Terms;

"PPSA" means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;

"PPS Register" means the Personal Property Securities Register established pursuant to the PPSA;

"Premises" means the address set out in Your Order, or any other place agreed in writing by Habitual Equipment and You from time to time, where you must keep the Goods during the Lease Term, which must be an address in Australia;

"Privacy Act" means the *Privacy Act 1988 (Cth)*, including as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)*;

"Privacy Policy" means any privacy policy of Habitual Equipment from time to time, available on the Website and forming part of these Terms;

"Rent" means the rent payable under the Lease and the number of instalments of rent as shown on the Website or in your shopping cart at the time of Your placing of an Order;

"Rent Payment Dates" means the dates on which You must pay Rent as shown on the Website or in your shopping cart at the time of Your placing of an Order commencing on the date shown on the Website or in your shopping cart at the time of Your placing of an Order to and including the date shown on the Website or in your shopping cart at the time of Your placing of an Order;

"Residual Amount" means the amount payable to purchase the Goods on expiry of the Lease Term as shown on the Website or in your shopping cart at the time of Your placing of an Order;

"Security Interest" includes:

- (a) a "security interest" as that term is defined in section 12 of the PPSA;
- (b) any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including a mortgage, charge, encumbrance, lien, pledge or hypothecation; and
- (c) any other right, interest or arrangement that:
 - (1) in substance secures the payment of money or the performance of an obligation; or
 - (2) gives a creditor priority over other creditors in relation to any property;

"strata corporation" has the meaning given in section 204 of the National Credit Code;

"Total Rent" means the total amount of Rent;

"Terms" means these terms and conditions, being terms and conditions for the lease of Goods;

"Website" means the website accessible through the domain name www.habitualequipment.com.au;

"You" means the individual or entity using the Website or leasing Goods through the Website.

3. ORDERS FOR GOODS

- (1) To place an Order for Goods, You must set up an Account in accordance with:

- (a) these Terms; and
 - (b) any relevant instructions on the Website.
- (2) An Order for Goods submitted by You is an offer by You to lease the Goods on these Terms plus a Delivery Charge. Habitual Equipment may accept or reject Your offer in its absolute discretion.
 - (3) An Order for Goods is deemed to be accepted by Habitual Equipment once the payment of the amount referred to in clause 8(1) for that Order has been received in cleared funds by Habitual Equipment within the time period specified in clause 8(1) and You have completed and returned a signed direct debit form in accordance with clause 8(2)(b).
 - (4) Subject to clause 9, each Order for Goods that You place will, if accepted by Habitual Equipment, be a separate and binding agreement between You and Habitual Equipment with respect to the lease of the relevant Goods to You, in accordance with these Terms.
 - (5) You cannot place an Order for someone else.
 - (6) You warrant to Habitual Equipment that all information provided by You when placing an Order for Goods is complete, true and accurate.
 - (7) Except to the extent otherwise required by law (including, without limitation, the CC Act), Habitual Equipment will not be liable to You, or any other person, for any loss, damage, cost or expense suffered directly or indirectly as a result of the information contained in your Order for Goods being incomplete or inaccurate, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise.
 - (8) Images of Goods on the Website are illustrative only and may vary from the Goods described or offered for lease.

4. YOUR ACCOUNT

- (1) To set up an Account You must:
 - (a) be at least eighteen (18) years of age;
 - (b) provide details of whether You are a natural person or an entity (e.g. a company) if you are setting up an Account for an entity you must be a director of that entity;
 - (c) if You are a natural person, provide details of whether You are going to use the Goods in Your business and, if you are, provide Your ABN details in respect of that business;
 - (d) have a valid credit card account or other account acceptable to Habitual Equipment in the absolute discretion of Habitual Equipment;
 - (e) be a resident of Australia; and
 - (f) be located in Australia at the time of setting up the Account.
- (2) You are not permitted to set up an Account on behalf of another person.
- (3) You can only place an Order for goods from Habitual Equipment from within Australia.
- (4) If you are setting up an Account for an entity you:
 - (a) must be a director of that entity; and
 - (b) You warrant to Habitual Equipment that you are authorised to open the Account for that entity and bind that entity to these Terms.

- (5) You warrant to Habitual Equipment that all information provided by You in the set up of, and in relation to, your Account is complete, true and accurate and You acknowledge that Habitual Equipment relies on that warranty from You in leasing Goods to You subject to these Terms.
- (6) If You become aware of any actual or potential unauthorised use of access of your password or your Account, You must notify Habitual Equipment immediately.
- (7) Except to the extent otherwise required by law (including, without limitation, the CC Act), Habitual Equipment will not be liable to You, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of:
 - (a) your Account information being incomplete or inaccurate; or
 - (b) any unauthorised use of your password or Account which takes place before You notify Habitual Equipment of such use,whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise.
- (8) If Habitual Equipment suffers any loss, damage, cost or expense as a result of any unauthorised use of your password or Account which takes place before You notify Habitual Equipment of such use then You must pay Habitual Equipment the amount of that loss, damage, cost or expense upon demand by Habitual Equipment.

5. LEASE

Subject to clause 6, on and from the Commencement Date Habitual Equipment must lease to You and You must take on the lease from Habitual Equipment for the Goods for the Lease Term at the Total Rent and on the terms and conditions contained in the Lease.

6. CONDITIONS PRECEDENT

- (1) The obligation of Habitual Equipment to lease the Goods to You is subject to and conditional upon:
 - (a) the acquisition by, and delivery of the Goods to, Habitual Equipment at a warehouse used by Habitual Equipment in Australia;
 - (b) You having made the payment to Habitual Equipment in accordance with clause 3(3); and
 - (c) You having completed and returned a properly signed direct debit form in accordance with clause 8(2)(b).
- (2) If the conditions precedent in clause 6(1) have not been fulfilled and fully satisfied or waived by Habitual Equipment by the Commencement Date, Habitual Equipment will be relieved of any obligation to lease the Goods to You. Any payment referred to in clause 6(1)(b) which has been made will be refunded by Habitual Equipment to You in accordance with clause 16 if the Lease does not proceed because the condition precedent in clause 6(1)(a) has not been satisfied or waived by Habitual Equipment.
- (3) This clause 6 is in addition to and does not limit the provisions of clause 9.

7. DELIVERY

- (1) You agree and acknowledge that:
 - (a) the Estimated Delivery Date has been calculated on an approximate basis;

- (b) Habitual Equipment does not guarantee the delivery of the Goods by Habitual Equipment by the Estimated Delivery Date;
 - (c) except to the extent expressly set out in these Terms or otherwise required by law (including, without limitation, the CC Act), neither Habitual Equipment nor any of its agents will be liable to You, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of any delay in delivery of the Goods to You by the Estimated Delivery Date, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise;
 - (d) You must make any arrangements necessary to enable You to receive delivery of the Goods; and
 - (e) Your obligation to make the payments set out in clause 8 at the times set out in that clause will not be affected by any delay in delivery of Goods caused or contributed to by You or a third party acting as Your agent.
- (2) Habitual Equipment will endeavour to inform You of any changes to the Estimated Delivery Date.
 - (3) No time of the essence transaction will be considered by Habitual Equipment unless agreed in writing by Habitual Equipment.
 - (4) Goods will only be delivered to addresses within Australia. Habitual Equipment will not deliver to PO Boxes in Australia where possible based on the size of the Goods.
 - (5) Following despatch of your Goods, Habitual Equipment will email You with confirmation of despatch and a delivery time to the Nominated Address.
 - (6) On delivery You will be required to sign a proof of delivery document. If You are not available to take delivery at the address provided by You in your Order for Goods (**Nominated Address**), the Goods will be deemed to have been delivered to You for the purposes of the Commencement Date and will be taken to a local depot or post office and a calling card containing the relevant contact details will be left at the delivery address. You will need to make your own arrangements to collect any Goods left at the local depot or post office.
 - (7) If You require Goods that You have Ordered to be re-directed to an address which is not the original address noted in your Order for Goods, Habitual Equipment may charge You a reasonable additional delivery fee for re-directing the delivery of the Goods.
 - (8) Without limiting clauses 7(1) to 7(7) above, Habitual Equipment will not be in default of these Terms by reason of any delay should such delay be caused by a Force Majeure Event.

8. RENT

- (1) With each Order made by You to Habitual Equipment, You must pay the Deposit plus the Delivery Charge to Habitual Equipment immediately after placing the Order using any payment method indicated on the Website or such other payment method as acceptable to Habitual Equipment.
- (2) Upon receipt of your payment of the Deposit plus the Delivery Charge by Habitual Equipment, Habitual Equipment will promptly issue You with:
 - (a) a tax invoice containing the following information:
 - i. the details of your Order; and

- ii. the receipt by Habitual Equipment of your payment of the Deposit plus the Delivery Charge; and
- (b) a direct debit form to make payments of Rent on each Rent Payment Date, which You must sign and return to Habitual Equipment as soon as practicable.
- (3) You acknowledge that Habitual Equipment has acquired or will acquire or make available the Goods for the purpose of the Lease to You of the Goods pursuant to these Terms and in consideration for that You acknowledge that the Deposit is non-refundable, except in the circumstances set out in clause 6(2).
- (4) On the Commencement Date, the Deposit will be applied towards the first monthly payment of rent.
- (5) Subject to clause 8(4), You must pay an instalment of on each Rent Payment Date.
- (6) Where You place separate Orders for Goods, the Goods may be delivered separately and a separate Delivery Charge will apply to each order.
- (7) All amounts payable by You (including the Delivery Charge) to Habitual Equipment in accordance any Order or invoice shall be calculated by including an amount for GST.
- (8) All monetary amounts on the Website are in Australian dollars.

9. CANCELLATION OF ORDERS

- (1) Habitual Equipment reserves the right to cancel, at any time before delivery and for any reason whatsoever, an Order for Goods that it has previously accepted. Habitual Equipment may do this for example, but without limitation, where:
 - (a) Habitual Equipment's suppliers are unable to supply Goods that they have previously promised to supply in accordance with the requirements of Habitual Equipment;
 - (b) a Force Majeure Event means that Habitual Equipment is unable to supply the Goods for lease;
 - (c) Goods Ordered were subject to an error on the Website, for example, in relation to a description, price or image, which was not discovered prior to the Order for Goods being accepted;
 - (d) You ask Habitual Equipment to cancel your Order in accordance with clause 9(3).
- (2) Subject to clause 9(3), You have no right to cancel, or vary, any Order for Goods after Habitual Equipment has accepted that Order.
- (3) You may only cancel an Order for Goods:
 - (a) prior to Habitual Equipment notifying you that your Order for Goods has been confirmed and providing you with an Estimated Delivery Date; or
 - (b) where Habitual Equipment has not been able to deliver your Order for Goods after one (1) month from the Estimated Delivery Date has passed, other than a result of any delay for which You are wholly or partly responsible such as a failure to provide the correct delivery address.
- (4) In the event that either You or Habitual Equipment cancel an Order for Goods in accordance with this clause 9 after payment of the Deposit has been

processed, Habitual Equipment will refund any money paid by You to Habitual Equipment in respect of that Order for Goods in accordance with clause 16 of these Terms.

- (5) Except to the extent otherwise required by law (including, without limitation, the CC Act) or as expressly set out in these Terms, Habitual Equipment will not be liable to You, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of the cancellation of your Order for Goods for any reason, and whether the Order for Goods is cancelled by You or by Habitual Equipment, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise.

10. OWNERSHIP OF GOODS

- (1) Subject to clause 20(1), Habitual Equipment retains full title to the Goods notwithstanding:
 - (a) the delivery of the Goods to You; and
 - (b) the possession and use of the Goods by You,subject only to Your rights under these Terms as a mere bailee of the Goods with a right only to use them in accordance with, and under, the Lease.
- (2) You shall have no interest in the Goods except as expressly set forth in these Terms.
- (3) You must protect Habitual Equipment's interest in the Goods, including making clear to others that Habitual Equipment is the owner of the Goods. You must not place, or allow to be placed, on the Goods any plates or marks that are inconsistent with Habitual Equipment's ownership of the Goods. If requested by Habitual Equipment, You must put plates on the Goods that state Habitual Equipment owns them.

11. LOCATION OF THE GOODS

- (1) You must not remove the Goods from the Premises without the prior written consent of Habitual Equipment.
- (2) Prior to delivery of the Goods under clause 7 and prior to any change in location of the Goods as contemplated by clause 11(1), You must, where You are any entity, upon request by Habitual Equipment arrange for all persons who have an interest in the Premises to deliver to Habitual Equipment an acknowledgment in writing (in a form acceptable to Habitual Equipment) that Habitual Equipment:
 - (a) has the absolute, unencumbered title to the Goods (as between Habitual Equipment and that person); and
 - (b) has the right to enter upon or into the Premises to inspect and remove the Goods at any time without any payment to, or the consent of, any person.
- (3) If at any time and from time to time Habitual Equipment sends You a written notice requiring You to inform Habitual Equipment where the Goods are located, and, if the goods are not in your possession, to give to Habitual Equipment all information in Your possession that might assist Habitual Equipment to locate the Goods, You will comply with that requirement within seven (7) days.

12. CONDITION AND USE OF THE GOODS

- (1) You must at all times keep and maintain the Goods in proper working order and condition and in good and substantial repair in compliance with the requirements, recommendations, specifications and instruction manuals of the manufacturer. Habitual Equipment will make due allowance for normal wear and tear but the Goods must at all times be capable of being used efficiently for the purpose, and to the capacity, for which the Goods were intended at the date of their acquisition by Habitual Equipment.
- (2) You will be fully responsible to Habitual Equipment for any loss of or damage to the Goods (however occasioned). You must give reasonable notice to Habitual Equipment in writing of any such loss or damage.
- (3) You must:
 - (a) keep the Goods in proper and secure premises;
 - (b) protect the Goods from fire, theft and all other risks; and
 - (c) not use or allow the Goods to be used for any purpose for which the Goods are not designed or is unsuitable.
- (4) You must only use and maintain the Goods in accordance with recognised methods and standards for Goods of their type and by appropriate methods and standards of use. Without limiting the generality of this clause, You must comply in all respects with the instructions and recommendations of the manufacturer or other supplier relating to the Goods and to their use, in particular where any failure in compliance would limit the obligations of that person to Habitual Equipment or You under any statute, agreement or otherwise.
- (5) You must not, without the prior written consent of Habitual Equipment, make any replacement, alteration or addition of any nature of the Goods.
- (6) You must comply in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful use of the Goods.
- (7) You grant Habitual Equipment the right, and will use best endeavours to ensure that others grant Habitual Equipment the right, at all reasonable times upon Habitual Equipment giving You reasonable notice to enter upon the Premises in order to:
 - (a) inspect the state of repair of the Goods and to observe the use of the Goods;
 - (b) to inspect any maintenance records in respect of the Goods; and
 - (c) to do any act, matter or thing which may be required to be done to give proper effect to the terms of the Lease or to protect Habitual Equipment's rights in the Goods.

For the avoidance of doubt, where the Premises are, or are part of, Premises used for residential purposes Habitual Equipment will not be entitled to rely on this clause in order to enter them to take possession of the Goods.

- (8) You must not at any time attach, affix or secure the Goods to land without the prior written consent of Habitual Equipment.
- (9) You must not without the prior written consent of Habitual Equipment, remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Goods.

- (10) You must notify any person seizing the Goods of the ownership of Habitual Equipment in the Goods and must give immediate written notice to Habitual Equipment such seizure.
- (11) It is Your responsibility to ensure that:
 - (a) You comply with all applicable laws in using the Goods; and
 - (b) the Goods are suitable for Your intended use and the environment and the position in which the Goods are to be used and comply with all applicable laws.
- (12) Habitual Equipment shall not be liable in any way as to whether the Goods, satisfy requirements under any applicable laws and Habitual Equipment makes no representation as to the fitness for purpose of the Goods.
- (13) You unconditionally and irrevocably indemnify and agree to keep indemnified Habitual Equipment against all costs, losses, damage, expenses, Claims and obligations which Habitual Equipment has or may suffer or incur by reason of, or in connection with, any breach of any applicable laws by You.

13. DEALING WITH THE GOODS

- (1) You must not do or agree, attempt, offer or purport to do any of the following in relation to the Goods without the prior written consent of Habitual Equipment:
 - (a) create or attempt to create or agree or permit to exist any Security Interest over the Goods other than a Security Interest in favour of Habitual Equipment;
 - (b) sell, assign, transfer or declare a trust over or otherwise dispose of the Goods;
 - (c) lease or licence the Goods or allow a surrender or variation of any lease or licence of the Goods;
 - (d) give control of the Goods to another person other than Habitual Equipment;
 - (e) part with possession of the Goods other than by giving possession to Habitual Equipment;
 - (f) change the nature of the Goods;
 - (g) deal in any other way with the Goods or interest in the Goods or allow any interest in the Goods to arise and/or be varied.

14. AVAILABILITY OF GOODS

- (1) Habitual Equipment reserves the right to withdraw or suspend from leasing any Goods displayed on the Website, either temporarily or permanently, at any time without notice to You.
- (2) Except to the extent otherwise required by law (including, without limitation, the CC Act), Habitual Equipment will not be liable to You, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of withdrawal or suspension of the Goods at any time, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise.

15. RISK

- (1) You agree to use and possess the Goods at your risk. You agree that Habitual Equipment will have no responsibility or liability for any loss or damage to any of Your property. To the full extent permitted by law, You release and discharge Habitual Equipment and its agents and employees from:

- (a) all Claims and demands on Habitual Equipment; and
 - (b) any loss or damage whatsoever and whenever caused to You or Your agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Goods or any accident to or involving the Goods or their use, operation, repair, maintenance or storage (whether occasioned by the negligence of Habitual Equipment or otherwise) or which may otherwise be suffered or sustained in, upon or near the Goods.
- (2) You must bear all risk of loss of, damage to or destruction of the Good on and from the Commencement Date until the point in time when the Goods are returned to Habitual Equipment.
- (3) You must assume, and indemnify Habitual Equipment against, all risks and liability for:
- (a) the Goods and for the use, operation, maintenance, repair and storage of the Goods (including but not limited to loss of profits, loss of revenue, consequential damage, inconvenience or loss of use for any period of time); and
 - (b) injuries to, or death of person, and damage to property however arising from or incidental to the use of the Goods, whether such injuries to, or death of person, be of agents or employees of You or of third parties, or such damage to property be Your property or property of third parties.

16. REFUNDS

- (1) You must choose your Goods carefully as refunds are not normally provided where you have simply changed your mind, made a wrong selection or found a cheaper alternative elsewhere.
- (2) Where Habitual Equipment is required to issue a refund of a payment (**Refund**) to You in accordance with these Terms:
- (a) the Refund will be made to the credit card account or other account used by You to lease the Goods;
 - (b) Habitual Equipment will endeavour to initiate the Refund as soon as practicable.
- (3) The timing of the receipt of the Refund by You will depend upon the time taken by your financial institution to process the Refund.
- (4) Except to the extent otherwise required by law (including, without limitation, the CC Act), Habitual Equipment will not be liable to You, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of any delay in You receiving any refund due to You, whether in contract, negligence or any other tort, equity, restitution, strict liability, under statute or otherwise.

17. INCORRECT, FAULTY OR DAMAGED GOODS

- (1) You should check your Goods as soon as they are delivered to You in Order to ensure that:
- (a) the Goods are what You Ordered; and
 - (b) the Goods are not damaged or faulty.
- (2) If You believe your Goods are damaged or faulty (**Damaged Goods**), or if You believe the Goods delivered are not the Goods that You Ordered (**Incorrect**

- Goods**), You must contact Habitual Equipment at the Website as soon as possible.
- (3) If You do not notify Habitual Equipment in writing of any Incorrect Goods within five (5) Business Days of delivery of the Goods to the Nominated Address, You are deemed to have accepted the Goods and to have accepted that the Goods accord with what you Ordered for the purposes of the Lease. Nothing in this clause affects or is intended to limit Your rights under the CC Act.
 - (4) Where the Goods arrive as Damaged Goods, or you have received Incorrect Goods, You must arrange for the Damaged Goods or Incorrect Goods to be returned to Habitual Equipment within a reasonable period of time (**Returned Goods**).
 - (5) If the Goods have a value or are of a kind ordinarily acquired for personal, domestic or household use or consumption such as to attract to the Lease the operation of the provisions of the CC Act and any relevant legislation of any other state or territory, certain conditions and warranties will be implied into the Lease and rights and remedies conferred upon You with respect to the Goods which cannot be excluded, restricted or modified by agreement (**non-excludable terms**). Habitual Equipment does not exclude any non-excludable terms but does exclude all other terms, conditions, guarantees and warranties implied by the written or unwritten law in relation to any sale or supply by Habitual Equipment to You of Goods.
 - (6) If there are any non-excludable terms in the Lease, the provisions of clause 17(8) will apply to them.
 - (7) You acknowledge that with respect to any non-excludable terms, the liability of Habitual Equipment is, where permitted, limited to replacement (or the cost of replacement) of the Goods, the supply (or the cost of supply) of equivalent Goods or the repair (or the cost of repair) of the Goods.
 - (8) Subject to clause 17(7), You agree that to the full extent permitted by law neither Habitual Equipment gives, nor any dealer, other previous owner of the Goods or any person purporting to act with the authority of Habitual Equipment has given, any condition, warranty or representation whatsoever in favour of You:
 - (a) as to the condition or quality of the Goods including, without limitation, latent and other defects and whether or not discoverable by Habitual Equipment or You;
 - (b) as to the suitability or fitness for ordinary or any special use or purpose of the Goods; or
 - (c) as to the correspondence by the Goods to any description of them.
 - (9) No further or other covenants or provisions, whether in respect of the Goods or otherwise will be deemed to be implied into the Lease or will arise between You and Habitual Equipment by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by Habitual Equipment, any dealer, other previous owner of the Goods or any person purporting to act with the authority of Habitual Equipment on or prior to the Commencement Date. The existence of any such implication or collateral or other agreement is by this clause negated.
 - (10) Any covenant or provision which is deemed by statute to be incorporated into the Lease but the operation of which may be lawfully excluded, restricted or

modified by agreement between You and Habitual Equipment or otherwise is, to the maximum extent possible, so excluded, restricted or modified.

- (11) Subject to clause 17(7), in no event will Habitual Equipment be liable (whether before or after the expiry or termination of the Lease) for any loss or damage which You suffer arising from, or caused or contributed to by, Habitual Equipment's negligence or the negligence of the servants or agents of Habitual Equipment. Nor will Habitual Equipment be liable for special, indirect or consequential loss or damage as a result of a breach by Habitual Equipment of the Lease including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Goods and the costs of any substitute Goods which You acquire.

18. LIMITATION OF LIABILITY AND DISCLAIMER

- (1) Subject to law, Habitual Equipment makes no representation and gives no warranty in relation to any sale or supply of Goods by Habitual Equipment to You.
- (2) You acknowledge that You have not relied upon any representation or warranty made by or on behalf of Habitual Equipment in relation to any sale or supply of Goods pursuant to these Terms, and will not rely upon any representation or warranty made by or on behalf of Habitual Equipment in relation to any future sale or supply of Goods by Habitual Equipment to You, which is not expressly agreed in writing by Habitual Equipment prior to the sale or supply of those Goods, subject in all respects to the written law.
- (3) You acknowledge that in deciding to make an Order and in entering into the Lease you have not relied in any way on the skill or judgment of Habitual Equipment.
- (4) To the extent permitted by law, in respect of each sale or supply of Goods by Habitual Equipment to You:
- (a) each CC Act Implied Term is expressly excluded; and
 - (b) the liability of Habitual Equipment is limited to the lowest of the cost of replacing the Goods, supply of equivalent product, or having the Goods repaired.
- (5) Subject to law, Habitual Equipment does not accept responsibility for any loss or damage, howsoever caused (including through negligence or matters outside its control), which You may directly or indirectly suffer in connection with your use of the Goods.

19. DEFAULT AND TERMINATION

- (1) Each of the following events is an Event of Default, namely:
- (a) if You fail to pay any Rent or other money payable under the Lease on the due date for payment and such failure continues for more than five (5) Business Days;
 - (b) if You fail to perform or observe any of the covenants or provisions of the Lease on Your part to be performed or observed (other than a failure of the type contemplated by clause 19(1)(a)) and (if capable of remedy) such default continues for more than ten (10) Business Days (or such longer period as Habitual Equipment in its absolute discretion permits) after notice from Habitual Equipment requiring You to remedy the same;

- (c) if Habitual Equipment ascertains that you have made any false, inaccurate or misleading statement having a material effect in relation to the making of the Lease or any related or collateral document;
 - (d) if any application for Your bankruptcy or winding up or administration is presented and You cannot within ten (10) Business Days reasonably satisfy Habitual Equipment that the application is frivolous or vexatious;
 - (e) if any execution or other process of any court or authority is issued against or levied upon the Goods (other than as a result of any act or omission on the part of Habitual Equipment);
 - (f) a receiver and/or manager or official manager or provisional liquidator or liquidator or administrator or other insolvency practitioner is appointed, or an encumbrancer takes possession of the whole or a substantial part of the undertaking or assets of You, or proceedings are taken against you and no defence is entered;
 - (g) any distress, execution, sequestration or other process is levied against Your property and the amount of the judgment is not paid out or discharged within seven (7) days;
 - (h) you convene a meeting or enter or propose to enter into any arrangement or composition with Your creditors;
 - (i) You become insolvent or commits any act of bankruptcy
 - (j) if You suspend payment of Your debts generally;
 - (k) if the Goods are abandoned or condemned or are seized or appropriated by any lawful authority and not released within twenty-one (21) days or are attached, sequestered, impounded or restrained upon and not released within twenty-one (21) days.
- (2) If an Event of Default occurs, Habitual Equipment may at its option and subject to the law:
- (a) by proceeding by appropriate court action, either at law or in equity, enforce performance by You of the applicable terms and provisions of the Lease or recover damages for the breach concerned; or
 - (b) by notice in writing to You in accordance with the law and after the expiry of any time period required under the law for You to rectify the default, terminate the Lease of the Goods, whereupon:
 - i. any interest You have in the Goods shall cease (but You shall remain liable as hereinafter provided), and
 - ii. You must, at Your cost, forthwith return the Goods to Habitual Equipment at such place nominated by Habitual Equipment and in default thereof Habitual Equipment may at any time retake possession of the Goods; and
 - iii. You authorise Habitual Equipment to enter upon any premises where the Goods may be located and take possession of the Goods; and
 - iv. You hereby release and indemnify Habitual Equipment from all liability to You and all other persons for any loss or damage occasioned by the repossession of the Goods or other exercise of the rights of Habitual Equipment pursuant to this clause 19.

- (3) Without prejudice to any rights and remedies of Habitual Equipment under the Lease or these Terms or the PPSA or at general law, in the event of the termination of the Lease pursuant to clause 19(2), Habitual Equipment may do any one or more of the following things, subject to the PPSA, including but not limited to the provision of all statutory notices to You in accordance with the PPSA, unless such notices are not required to be given to You under the PPSA:
 - (a) retain all payments of Rent and other moneys previously paid by You;
 - (b) re-lease all or any part of the Goods for such consideration and upon such terms as Habitual Equipment thinks fit; and
 - (c) in the absolute discretion of Habitual Equipment, sell all of any part of that Goods at private or public sale (including auction or closed tender) upon such terms as Habitual Equipment thinks fit.
- (4) Habitual Equipment may transport the Goods to any location Habitual Equipment desires in order to effect a re-lease or sale.
- (5) In addition, Habitual Equipment shall be entitled to recover from You all costs, expenses and losses which Habitual Equipment must sustain by reason of any breach by You of any of these Terms or the Lease, or both, together with a reasonable sum for legal fees (including fees on a solicitor and client basis) and such expenses as shall be expended or incurred in the seizure, lease or sale of the Goods.
- (6) The rights and remedies of Habitual Equipment under these Terms or the Lease, or both, in the event of default, shall not be deemed to be exclusive, but shall be cumulative and shall be in addition to all other remedies available to Habitual Equipment at law, in equity or in bankruptcy.

20. PURCHASE OPTION EXPIRY AND COLLECTION COST

- (1) Upon expiry of the Lease Term, You have the right to acquire title to the Goods by paying to Habitual Equipment the Residual Amount together with any Rent due or accrued due under the Lease provided that You have complied with all of Your other obligations under the Lease.
- (2) You must exercise the purchase option contained in clause 20(1) by:
 - (a) email notice to Habitual Equipment at least thirty (30) days prior to expiry of the Lease Term; and
 - (b) paying the Residual Amount to Habitual Equipment using a valid credit card account or other account acceptable to Habitual Equipment in the absolute discretion of Habitual Equipment, on or prior to expiry of the Lease Term.

If You fail to do that, You will be deemed to have not exercised that purchase option.

- (3) If You do not exercise the purchase option contained in clause 20(1) then upon expiry of the Lease Term You must:
 - (a) pay any unpaid Rent to Habitual Equipment; and
 - (b) co-operate with Habitual Equipment and either:
 - i. return the Goods to an address nominated by Habitual Equipment; or
 - ii. pay Habitual Equipment a fee of \$199.00 to collect the Goods,

and in either event the Goods must be appropriately protected and in proper working order and condition and in good and substantial repair at the time of return to Habitual Equipment or collection by Habitual Equipment.

- (4) If the Goods are not returned to Habitual Equipment as and when required by clause 20(2), Habitual Equipment may retake possession of the Goods. For that purpose Habitual Equipment and its employees and agents may, without notice, liability or legal process, enter upon or into the Premises and may break open any gate, door or fastening and detach or dismantle the Goods from any part of the Premises to which the Goods have been affixed.

21. EARLY TERMINATION

- (1) You have the right, subject to the conditions set out in clause 21(2), to terminate this Lease during the Lease Term in respect of all of the Goods on any Rent Payment Date (**proposed termination date**). You may exercise this right by serving a notice on Habitual Equipment at least thirty (30) days prior to the proposed termination date stating that you wish to terminate this Lease in respect of all of the Goods on the proposed termination date.
- (2) You acknowledge that Habitual Equipment incurs costs to source the Goods to lease to You. You may only terminate the Lease under clause 20(1) if:
- (a) on both the date of service of the notice under clause 20(1) and the proposed termination date:
- i. no Event of Default or event which, with the giving of notice or the lapse of time or both, would become an Event of Default has occurred or, having occurred, is continuing to subsist; and
 - ii. You have not repudiated the Lease; and
- (b) You either:
- i. return the Goods to an address nominated by Habitual Equipment on the proposed termination date; or
 - ii. pay Habitual Equipment a fee of \$199.00 to collect the Goods, and in either event the Goods must be appropriately protected and in proper working order and condition and in good and substantial repair at the time of return to Habitual Equipment or collection by Habitual Equipment; and
- (c) on the proposed termination date You pay to Habitual Equipment:
- i. an amount equivalent to the lesser of three (3) months Rent and the unpaid balance of Rent for the unexpired portion of the Lease Term, as a genuine pre-estimate of the loss of rent Habitual Equipment will incur while trying to find a new lessee for the Goods; and
 - ii. an amount of \$250.00, as a genuine pre-estimate of the cost Habitual Equipment will incur to find a new lessee for the Goods.

22. AUTOMATIC RENEWAL FOR BUSINESSES ONLY

- (1) This clause 22 only applies if:
- (a) You:
- i. are not a natural person or strata corporation; or

- ii. are a Natural Person, who has provided an ABN to Habitual Equipment at the time of setting up Your Account and are using the Goods wholly or predominantly in Your business; and
- (b) You do not exercise the purchase option contained in clause 20(1).
- (2) On the Expiry Date, the Lease Term and the Lease will automatically renew for a further term of one (1) month, and successive one (1) month terms thereafter, unless a party gives written notice to the other party that it wishes to cease the automatic renewal. Such notice must be given no later than thirty (30) days before the Expiry Date or the end of any subsequent renewal term.
 - (3) Where the Lease Term is extended pursuant to clause 22(2), this Lease and Your obligations under the Lease will continue until it is determined by either party giving written notice to the other party in accordance with clause 22(2).
 - (4) Habitual Equipment will notify you at least sixty (60) days before the Expiry Date about the automatic renewal under clause 22(2).
 - (5) For the avoidance of doubt, there will be no renewal or extension of the Lease Term unless clause 22(1) is satisfied.

23. WARRANTIES

By providing information through the Website, including but not limited to credit card information through the Website to Order Goods, You represent and warrant that:

- (a) You are at least 18 years of age;
- (b) You are legally authorised to provide such information to us;
- (c) the information you have provided to us in placing an order for Goods is complete, true and accurate;
- (d) You are legally authorised to perform payments from the credit card account or other account used by You; and
- (e) there are sufficient funds or credit available to complete a payment using the credit card account or other account used by You.

24. INDEMNITY

- (1) You must indemnify and keep indemnified Habitual Equipment and the servants and agents of Habitual Equipment against all Claims made upon or against Habitual Equipment arising out of or in any way connected with any breach of these Terms by You or any person claiming through or under You.
- (2) Subject to law, Habitual Equipment has no liability to You, or any person claiming through or under You for Indirect or Consequential Loss.

25. PRIVACY

You consent to the collection and use of Personal Information (as defined in the Privacy Act) by Habitual Equipment in Order to enable Habitual Equipment to carry on its business and supply the Goods to You.

26. WEBSITE CONTENT

- (1) Habitual Equipment may, at any time, add or remove content from the Website without notice.
- (2) Any articles, information or content published on the Website must be read subject to these Terms and Conditions.
- (3) Although Habitual Equipment uses its best endeavours to confirm the accuracy of any information published on the Website, to the maximum extent permitted

by law, You agree that Habitual Equipment cannot be held responsible for inaccuracies or errors caused by incorrect information supplied to Habitual Equipment. You agree to make Your own enquiries to verify information provided.

- (4) To the maximum extent permitted by law, Habitual Equipment will not be liable for any errors in third party content, or for any actions You take in reliance on such content. Neither You nor any other person may hold Habitual Equipment liable for any delays, inaccuracies, errors or omissions in respect of such content, the transmission or delivery of such content or any loss or damage arising from any of them.

27. DATA AND TRANSMISSIONS

- (1) Given the nature of the internet, we cannot guarantee that any data transmission is totally secure, free from viruses, fault or other conditions which could damage or interfere with Your computer systems. Habitual Equipment does not warrant that Your access to the Website will be uninterrupted, error free or that any defects will be corrected. Whilst Habitual Equipment takes precautions to protect information, Habitual Equipment does not warrant and cannot ensure the security of any content or information You transmit via the Website. You therefore transmit to the Website at Your own risk. However, once Habitual Equipment receives Your transmission, Habitual Equipment will take reasonable steps to preserve its security in accordance with all applicable laws.
- (2) You must take Your own precautions to ensure that the process which You use to access the Website or any website does not expose You to the risk of viruses, malicious computer code or other forms of interference which may damage Your own computer system. For the avoidance of doubt, Habitual Equipment will not accept any responsibility for any interference or damage to Your own computer system which arises in connection with Your use of the Website.

28. COOKIES

Cookies may be used on the Website to gather data in relation to the Website. By using the Website You consent to the use of cookies (although You may be able to disable cookies on Your web browser).

29. LINKS TO OTHER WEBSITES

- (1) The Website may contain links to other websites, content or resources, which are owned or operated by third parties, such as third party suppliers for payment methods. These linked websites are not under the control of Habitual Equipment and Habitual Equipment is not responsible for the operation, availability or content of any linked website or any link contained in a linked website. Habitual Equipment provides these links to You for convenience only and the inclusion of any link does not imply an endorsement by Habitual Equipment in relation to the linked website. You access linked websites at Your own risk. Subject to any non-excludable rights, Habitual Equipment disclaims all warranties, express and implied, as to the accuracy, value, legality or otherwise of any materials or information contained on linked websites. You should carefully review the terms of use and privacy policies of all websites belonging to other parties that You visit, including third party suppliers for payment methods.
- (2) Habitual Equipment reserves the right to prevent third parties from linking to the Website.

30. PPSA

- (1) If Chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under or in connection with these Terms or the Lease or both, You agree the following provisions of the PPSA will not apply to the enforcement of that Security Interest:
 - (a) section 95 (notice of removal of accession), to the extent that it requires Habitual Equipment to give You a notice;
 - (b) section 96 (when a person with an interest in the whole may retain accession);
 - (c) section 125 (obligation to dispose of or retain collateral);
 - (d) section 130 (notice of disposal), to the extent that it requires Habitual Equipment to give You a notice;
 - (e) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (f) subsection 132(4) (statement of account if no disposal);
 - (g) section 142 (redemption of collateral); and
 - (h) section 143 (reinstatement of security agreement).
- (2) You consent to Habitual Equipment effecting a registration on the PPS Register (in any manner Habitual Equipment considers appropriate) in relation to any Security Interest arising under or in connection with these Terms or the Lease or both and You agree to provide all assistance reasonably required by Habitual Equipment to facilitate the registration of this Security Interest.
- (3) You waive Your right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (4) You acknowledge that:
 - (a) the interest of Habitual Equipment in the Goods pursuant to these Terms or the Lease or both is a Security Interest for the purposes of the PPSA;
 - (b) this Security Interest relates to the Goods; and
 - (c) the Lease is a security agreement for the purposes of the PPSA.
- (5) To the extent permitted by the PPSA, Habitual Equipment and You agree that neither Habitual Equipment nor You will disclose information of the kind mentioned in section 275(1) of the PPSA.

31. GENERAL

- (1) These Terms may be amended at any time by Habitual Equipment without notice and Your ability to place an Order for Goods may be terminated at any time without notice. Every time You use the Website to lease Goods, the Terms in force at that time will apply between You and Habitual Equipment.
- (2) Your continued use of the Website or the placement of any Order for Goods following such amendment of these Terms will represent an agreement by You to be bound by the Terms as amended. Where Your access to the Website is terminated, all disclaimers and limitations of liability set out in these Terms will survive. Reference to "Website" includes the whole or any part of the web pages located on this webpage (including but not limited to

any elements of design, underlying code, text, sounds, graphics, animated elements or any other content).

- (3) Where Your access to the Website, is terminated, all disclaimers and limitations of liability set out in these Terms will survive.
- (4) These Terms are governed by and construed in accordance with the laws of New South Wales, Australia and You irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia. If any provision of these Terms is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of these Terms, which will continue in full force and effect. If You access the Website in a jurisdiction other than New South Wales, Australia, You are responsible for compliance with the laws of that jurisdiction, to the extent that they apply.
- (5) Any notice delivered by Habitual Equipment to You under these Terms will be delivered by email to the email address associated with Your Account. Any notice delivered by You to Habitual Equipment under these Terms must be delivered by contacting Habitual Equipment at info@habitualequipment.com.au.
- (6) A notice given in accordance with this clause takes effect when taken to be received (or at a later time specified in the notice), and is taken to be received:
 - (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
 - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice;
 - (d) if sent by email, at the time the email is sent (provided the sender has not received a notification within eight Business Hours after the email is sent that the email was not received by the recipient),but if the delivery, receipt or transmission is not on a Business Day, or is after Business Hours on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.
- (7) A party may exercise any right, power or remedy at its discretion and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure or delay by a party in exercising a right, power or remedy does not prevent its exercise. A right may only be waived in writing, executed by the party giving the waiver.
- (8) Part or all of a clause of these Terms that is illegal or unenforceable will be severed from these Terms and will not affect the continued operation of the remaining provisions of these Terms.
- (9) These Terms comprise the entire agreement between You and Habitual Equipment and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in these Terms will have any effect from the date of these Terms.

- (10) Any legislation which varies an obligation or right, power or remedy of a party that is bound by these Terms is excluded to the full extent permitted by law.
- (11) Habitual Equipment makes no representations that the content of the Website complies with the laws of any country outside Australia.