



CSS Computer Finance Pty Ltd
ABN 12 003 103 642

Lease and Rental Terms and Guarantee and Indemnity Terms

LEASE AND RENTAL TERMS

These terms are used by CSS Computer Finance Pty Ltd ("us") for both finance lease agreements and rental agreements throughout Australia.

1. MEANING OF WORDS AND GENERAL INTERPRETATION

1.1 Words used in these terms which begin with capital letters have the meaning given below or as those words appear in the Hiring Schedule.

1.2 **"Commencement Date"** means the date Your offer is accepted by us in accordance with clause 2.2.

"Controlling Person" means any person or persons who, directly or indirectly and either alone or together with other persons, may control You, which includes without limitation the capacity to determine the outcome of decisions about Your financial and operating policies, but does not include the directors of a publicly listed company.

"Default Event" means any of the events described in clause 14.

"Default Rate" means the interest rate applied by us to calculate our return under this Hiring Agreement.

"Goods" means each and every item specified in the Hiring Schedule and includes any part of them, together with all spare parts, enhancements and updates which may be incorporated with the Goods during the Hiring.

"Hiring" means the lease or rental of the Goods created in accordance with the Hiring Agreement.

"Hiring Agreement" means our agreement with You as set out in either a Lease Schedule or a Rental Schedule and these terms.

"Insurance" means any insurance cover required to be entered into by You under clause 12.1.

"Hiring Schedule" means either a Lease Schedule or Rental Schedule, as completed by You.

"Lease Schedule" means a schedule in such form as we may give to You which if completed in accordance with these terms will form a Hiring Agreement which is a lease agreement.

"Market Value" means the value of the Goods as determined by a person nominated by us as being experienced in valuing goods of a type which are similar to the Goods.

"Rebate Rate" in respect of any period means any agreed Rebate Rate set out in the Hiring Schedule but, if there is no agreed Rebate Rate, then the rate to be applied will be, at our option:

- the swap rate for the relevant period as disclosed by Bloomberg; or
- the discount rate determined by us at the time of calculation as applicable to the early termination of its funding of the Hiring.

"Recoverable Amount" is the total of the following:

- the sum of the Rent Instalments and any other moneys then due and owing to us but not paid; plus
- the sum of the Rent Instalments owing but not yet due (after deduction of FID, GST and stamp duty) as discounted by applying to each Rent Instalment the Rebate Rate;

(in each case the discount rate applies to each Rent Instalment from the date the Recoverable Amount is payable to the date the Rent Instalment would have been due); plus

- all amounts payable under clauses 6.7 and 6.9.

However, if the Hiring Agreement is a Rental Agreement and:

- if termination occurs within 3 months before or at any time after the end of the Minimum Term, since You are required to give us notice of termination of the Hiring under clause 4, the Rent Instalments referred to in subparagraph (b) will be those that would have been payable if You had given a notice of termination under clause 4.3 on the date of termination of the Hiring; but
- if, prior to the termination of the Hiring, You had given a notice under clause 4.2(a), the Rent Instalments referred to in subparagraph (b) will be those which would have been payable if the Hiring had terminated as a result of Your notice.

You agree that in the calculation of the Recoverable Amount, particularly in relation to our entitlement to Rent Instalments not owing as at the termination of the Hiring, we need not attempt to hire the Goods to anyone else after they have been returned to our possession.

"Rental Schedule" means a schedule in such form as we may give You which if completed in accordance with these terms will form a Hiring Agreement which is a rental agreement.

"Residual Value" means the amount set out in the Lease Schedule for a Lease Agreement.

"we" and **"us"** includes our agents and other authorised representatives.

"You" or **"Your"** means the person named as customer in the Hiring Schedule, and each and every one of them, jointly and severally.

In the interpretation of the Hiring Agreement:

- the singular includes the plural and vice versa, any gender includes the other genders and a person includes an individual, a body corporate or a government; and
- any warranty, obligation or right which binds or benefits two (2) or more persons under the Hiring Agreement binds or benefits those persons jointly and severally.

2. AGREEMENT

You may offer to lease or rent Goods from us by giving us a signed Hiring Schedule (which can be either a Lease Schedule or a Rental Schedule). You may only withdraw or vary this offer with our consent. If we accept an offer made by You in a Lease Schedule, then we will enter into a Lease Agreement with You. If it is a Rental Schedule, then we will enter into a Rental Agreement with You.

2.2 Our acceptance of Your offer will occur when we notify You that we also have signed the Hiring Schedule or when we agree with the supplier of the Goods to acquire them for the purposes of the Hiring Agreement, whichever occurs first.

2.3 These are the only ways in which we will accept Your offer. Neither the payment by You of any money on account of rent (even if we accept it) or any representations made by the supplier of the Goods, even if we have an arrangement with the supplier for providing finance for the supplier's products, nor any agreement which we make with the supplier can be relied upon to establish the Hiring Agreement.

2.4 Our acceptance of Your offer may be subject to a guarantee given by someone nominated by us and in the form of the annexed Guarantee Schedule.

3. TERM OF LEASE AGREEMENT

If the Hiring Agreement is a Lease Agreement, the Hiring will begin on the Commencement Date (unless an earlier date is agreed under clause 6.2) and end on the Expiry Date, unless terminated earlier under clause 15.

4. TERM OF RENTAL AGREEMENT, AND VARIATION

4.1 This clause 4 only applies to Rental Agreements.

4.2 The Hiring will begin on the Commencement Date (unless an earlier date is agreed under clause 6.2) and will continue until You terminate it by giving us prior written notice that You wish to do so, as follows:

- If You want the Hiring to end at the expiry of the Minimum Term, Your notice must be given at least 3 months before the end of the Minimum Term; otherwise the Hiring will be extended by a further 3 months.
- You may terminate the Hiring at the end of that further 3 month period or in any subsequent month by giving us at least one month's prior written notice.
- All notices of termination take effect on the same date in the relevant month as the date when Your Rent Instalments are due. (If You pay Rent Instalments quarterly, or any other period which is not monthly, You will be liable for rent only up to the date when Your termination notice takes effect, which will be the relevant proportion of a Rental Instalment).

This is the only way in which You may terminate the Hiring.

4.3 If You wish to terminate the Hiring after the Minimum Term without giving us the prior notice required by clause 4.2, You may do so but You must, at the same time, pay to us an amount equivalent to the amount of rental You would have had to pay if, on the day when You notify us of the termination of the Hiring, You had given us the minimum notice of termination required by clause 4.2.

4.4 If You wish to vary the Hiring, whether in relation to the Term or the goods which are being hired, we will consider Your request, but whether we do so will be entirely at our discretion.

5. DELIVERY OF THE GOODS AND RISK IN THEM

- 5.1 You must obtain delivery of the Goods but, before doing so, You must satisfy Yourself as to their identity, condition, merchantable quality and fitness for Your purpose.
- 5.2 If You obtain possession of the Goods before the commencement of the Hiring, You will be doing so at Your own risk and not as our agent.

6. PAYMENT OF RENT AND OTHER MONEY

- 6.1 You must pay all of the Rent Instalments to us on or before the dates set out in the Hiring Schedule.
- 6.2 If we agree that the Hiring may begin before the Commencement Date, You must pay rent from the day on which the Hiring begins until the Commencement Date, with each day calculated as 1 day's proportion of a Rent Instalment (and, if Rent Instalments are payable quarterly, it will be assumed that each quarterly period has 91.25 days).
- 6.3 The Rent Instalments and all other amounts payable under the Hiring Agreement must be paid by direct debit or electronic funds transfer in accordance with our repayment procedures (as notified to You in writing from time to time), unless we agree otherwise.
- 6.4 A payment which You make is not considered made until we have actually received the money.
- 6.5 You must pay interest to us on any money payable under the Hiring Agreement which may from time to time be overdue and also on any damages which You may be liable to pay to us at the Default Rate.
- 6.6 You must pay to us all costs and expenses, including legal costs, which we incur in exercising any of our rights under the Hiring Agreement, including any amounts which we pay to release any lien claimed by anyone over the Goods or to remedy any breach of Your obligations under the Hiring Agreement.
- 6.7 You must pay, or reimburse us for, all duties, taxes and other government charges which are payable by us or You and which in any way relate to the Goods, their use, possession or operation, the Hiring Agreement or the Hiring and we may, by notice to You, vary the Rent Instalments due to any variation in any such government charges.
- 6.8 In the following subclauses, GST, Input Tax Credit, Input Taxed and Taxable Supply have the same meanings as under *A New Tax System (Goods and Services) Act 1999*.
- 6.9 Subject to clause 6.10, if we are or become liable to pay GST in relation to any Taxable Supply made to You under or in connection with the Hiring Agreement, in addition to any other amounts payable or consideration provided by you under this Hiring Agreement, You must, at the same time, pay to us an amount equal to the amount of GST we have to pay. However, we must reduce this amount by the amount of any Input Tax Credit which we notify to You that we are entitled to claim in respect of the payment, cost, expense or liability.
- 6.10 Clause 6.9 does not apply to the Rent Instalments to the extent that they are expressed to be inclusive of GST.
- 6.11 You acknowledge that the Rent Instalments may include amounts for any commission, fees or other remuneration that we have paid or will pay on account of this Hiring Agreement, including any commission payable to any broker, agent, dealer or other person who introduces You to us, or us to You. You also acknowledge that we may receive commission, fees or other remuneration for introducing You to another person for any purpose relating to this Hiring Agreement.

7. YOUR WARRANTIES AND ACKNOWLEDGMENT

- 7.1 You warrant to us that:
- (a) all information which You have given to us is correct and not misleading;
- (b) in entering into the Hiring Agreement You have not relied upon any conduct of or statement made by us or anyone acting on our behalf concerning the effect on You of entry into the Hiring Agreement, Your financial affairs or taxation position, the quality of the Goods or their suitability for any purpose or the classification of this transaction under Australian Accounting Standards; and
- (c) You are authorised to enter into the Hiring Agreement and in doing so You are not in breach of any authorisations or regulations affecting or controlling You or Your business.
- 7.2 You acknowledge that the Hiring Agreement sets out the whole agreement between us in respect of the Goods and, without limitation, we are not responsible for any performance or service issues, warranties or the use or other benefits which You may or may not obtain from the Goods or any related services.

8. USE, MAINTENANCE, REPAIR AND WARRANTIES

- 8.1 You must at all times maintain the Goods in good working order and condition and in accordance with the manufacturer's specifications and recommendations. You must keep detailed maintenance records and produce them to us whenever we require it and also produce a copy of Your maintenance agreement for the

Goods or such other evidence as we regard as satisfactory of their being maintained as required by this clause.

- 8.2 You must only use the Goods for the purpose for which they were designed and in accordance with the manufacturer's instructions.
- 8.3 You must only engage qualified personnel to undertake any repairs or other services to the Goods and not do anything which may cause any such person to believe that we will be responsible for paying that person's account.
- 8.4 You must not make any alteration or addition to the Goods which may adversely affect their Market Value without our prior written consent.
- 8.5 You must not remove the Goods from the location set out in the Hiring Schedule without our written consent.
- 8.6 You must ensure that the Goods are only used by persons with proper qualifications and experience and must maintain all user logs or other records customarily maintained for such goods.
- 8.7 You must keep the Goods secure from theft or damage and not do or allow anything to be done which is likely to jeopardise their safety, condition or value.
- 8.8 You must maintain the Goods under Your personal control and not enter into any agreement with anyone in relation to the Goods (except as required to maintain or repair them) or do anything to prejudice our rights in the Goods.
- 8.9 You must ensure that all warranties, service level agreements and other performance requirements which You may wish to rely upon in relation to the Goods are arranged directly between You and the supplier of the Goods or other relevant person. We have no liability to You for any of these things.

9. COMPUTER EQUIPMENT

- 9.1 The following subclauses apply where the Goods are computer or other information technology equipment.
- 9.2 You must ensure that there are installed upon the Goods all such enhancements or upgrades to any software or firmware required for the use of the Goods as from time to time are generally made available by the manufacturer of the Goods to other users.
- 9.3 Where, at Your request, we have paid licence fees or other amounts to a supplier for software which is to be used with the Goods, or have paid amounts to a supplier of maintenance or support services in relation to the Goods (or any software used with them), then the Rent Instalments are for the use of the Goods with the benefit of such software or maintenance or support services.
- 9.4 If, for any reason, there is an early termination of the term of the Hiring, then any amount which may be recovered from a software supplier or from a supplier of maintenance or support services, because You no longer wish to use the software or receive those services, is a matter for You to arrange with the relevant supplier and will not affect our entitlement to recover from You the balance of the Rent Instalments under clause 15. Of course, if any such supplier makes a refund to us of any such licence, maintenance or support fees, we will set them off against any amount which You owe us under the Hiring Agreement.
- 9.5 If any amount which we have paid relates to software which forms part of or is supplied for use with the Goods, then You are responsible for ensuring that You are licensed to use that software and we have no obligation to You at all regarding the software apart from sublicensing to You (so far as we can) any licence which we have gained as a consequence of paying an amount to the software supplier.
- 9.6 Upon our retaking possession of the Goods, we will give You such an opportunity to download any data and delete any software from them as we consider reasonable in the circumstances, but we will not be liable for any loss of such data and You indemnify us against any claim made by any person in relation to our possessing the Goods when there is another person's data or software on them or our deletion of any such data or software.

10. OUR OWNERSHIP AND RIGHTS

- 10.1 The Goods are our property. You are a bailee of the Goods only and have no right to purchase or acquire any interest in them.
- 10.2 You agree that we may have entered into the Hiring Agreement in any capacity we chose and may, in any way, charge or deal with our interests in the Hiring Agreement without notice to You. We may provide information about this Hiring Agreement, You and any of your related bodies corporate (as defined in the Corporations Act) to any person with whom we have dealings in relation to the Hiring Agreement.
- 10.3 You must ensure that we have access to the Goods, at any time, in order to exercise any of our rights, including testing the Goods or otherwise checking whether You have complied with Your obligations. You authorise us to enter any premises where the Goods are located for these purposes. We will give You reasonable notice before doing so, unless we consider we must act quickly in order to protect our interest in the Goods.

11. SOME OF YOUR FURTHER OBLIGATIONS

- 11.1 You must notify us immediately of any change in Your address.
- 11.2 You must produce the Goods for inspection whenever we request You to do so.
- 11.3 You must notify us immediately following any loss or damage to the Goods.
- 11.4 You must not assign the Hiring Agreement or any of Your rights without our prior written consent.
- 11.5 You must indemnify us against any claims or costs of any kind arising out of the use, operation or possession of the Goods (including, without limitation, any claims in relation to a breach of any other person's intellectual property rights).
- 11.6 During the term of this Rental, you must provide us with copies of financial statements and other information that may reasonably be requested.

12. INSURANCE

- 12.1 You must at all times during the Hiring (and during any time after then when the Goods are still in Your possession) maintain public liability insurance for injury or damage caused by use of the Goods, property insurance against loss or damage to the Goods for all risks and for their Market Value (and we may notify You of what this amount should be) and any other insurance policies which we reasonably require.
- 12.2 Both the insurer and the terms of the Insurance must be approved by us. You must note our interest on all Insurance policies as a co-insured and produce Insurance policy documents, certificates of currency or proof of payment whenever we request You to do so.
- 12.3 You must not do or fail to do anything which would:
- (a) result in any Insurance claim being refused or not met in full;
 - (b) vary any Insurance in any material respect without our consent; or
 - (c) enforce, conduct, settle or compromise any Insurance claim without our consent.
- 12.4 You must notify us of any circumstances which may entitle a claim to be made under any Insurance.
- 12.5 You must forward to us any proceeds or any payment of any entitlement sent to You under any Insurance, unless we agree otherwise. Any such amount may be applied by us towards the repair or replacement of the Goods or the reduction of Your liability to us, at our discretion.
- 12.6 Any money we receive under any Insurance for loss or damage to the Goods which is not applied towards the repair or replacement of the Goods will be applied as follows:
- (a) first, in reimbursing any costs incurred by us in obtaining or attempting to obtain any of this money;
 - (b) second, in reduction of any amount payable by you under clauses 15, 16, 17 or 18;
 - (c) third, in refunding to you any amount You have paid to us under clauses 15, 16, 17 or 18; and
 - (d) the balance, if any, is for us to keep.

13. IMPLIED WARRANTIES AND LIMITATION OF LIABILITY

- 13.1 Where the Trade Practices Act, 1974 or other laws imply conditions or warranties or give other rights in respect of the Hiring Agreement and it is not lawful or possible to exclude them, our liability for any breach of such a condition, warranty or right will (but only to the extent permitted by law) be limited (at our option):
- (a) in the case of goods supplied, to the replacement or repair of the goods or the supply of equivalent goods, the payment of the cost of repairing or replacing the goods of or acquiring equivalent goods; and
 - (b) in the case of services supplied, to the supplying of the services again or the payment of the cost of having the services supplied again.
- 13.2 Except as provided in clause 13.1, all implied conditions, warranties and rights are excluded from the Hiring Agreement.
- 13.3 Except as provided in clause 13.1, and notwithstanding any implication arising from any other clause, we will not be liable to You or any person claiming under You in contract or in tort for or in respect of any direct, indirect or consequential loss, damage, expense or injury suffered by You or any other person, arising out of or in relation to the Hiring Agreement, its performance, any delay in its performance or its non-performance (including, by way of illustration and not limitation, liability due to our negligence or default), or any error (whether negligent or not) in information supplied to You before or after the date of the Hiring Agreement in connection with it.

14. DEFAULT EVENTS

- 14.1 A Default Event occurs if:
- (a) You fail to pay any one or more Rent Instalments in whole or in part and also fail to comply with any subsequent notice by us requiring payment to be made;
 - (b) You fail to pay any one or more Rent Instalments in whole or in part and also fail to meet a subsequent undertaking (written or oral) given by You to us to remedy the default;

- (c) You default in complying with any of Your obligations under clause 12 (Insurance);
- (d) You purport to assign or in any way deal with the Goods or any of Your rights under the Hiring Agreement;
- (e) the Goods are lost or destroyed or we form the opinion that they are so damaged as to make their repair uneconomical;
- (f) You default in complying with any obligation under the Hiring Agreement (except where there is an event described in subclauses (a) to (e) above) and the default is not remedied within fourteen (14) days of us giving You notice of the default;
- (g) You are a corporation and action is taken by You or another person on the basis that You are insolvent or unable to pay Your debts when they are due, including any application for the appointment of a liquidator, receiver or administrator;
- (h) You are an individual and You die or become incapable of managing Your own affairs by reason of mental illness or other condition;
- (i) You are a partnership and the partnership is dissolved or an application is made to a Court for dissolution of the partnership;
- (j) the holder of any security given at any time over any of Your assets becomes entitled to exercise any powers arising on default pursuant to that security or otherwise take action to enforce the security;
- (k) an event described in subclauses (g) to (j) occurs in relation to any guarantor of any of Your obligations under the Hiring Agreement or the guarantor, if an individual, becomes or becomes liable to be declared bankrupt;
- (l) any warranty given by You in relation to the Hiring Agreement is false; or
- (m) due to a change in any Controlling Person, we have, at our discretion, determined that there has been a change in the credit risk associated with the Hiring Agreement from that which we assessed before the Hiring Agreement was entered into and no agreement is made with You as to a change to the terms of the Hiring Agreement which is satisfactory to us.

15. OUR RIGHTS UPON A DEFAULT EVENT

- 15.1 You will be deemed to have repudiated the Hiring Agreement if a Default Event occurs. We will then be entitled to terminate the Hiring by written notice to You or by taking possession or attempting to take possession of the Goods. We do not have to give You written notice of termination if we consider that the Goods or our rights upon termination may be adversely affected if we do not immediately take possession of the Goods.
- 15.2 Upon such termination of the Hiring, You are immediately liable to pay to us, without need for any prior demand, and both by way of liquidated damages arising from the Default Event and from the early termination of the Hiring, the Recoverable Amount, together with any other amounts payable under the Hiring Agreement.
- 15.3 However, if we terminate the Hiring under clause 14.1(e) (loss or destruction) the amount payable under clause 15.2 will be the Recoverable Amount plus, as compensation for loss:
- (a) if the Hiring Agreement is a Rental Agreement, the Market Value which the Goods would have had if they had not been lost, destroyed or so damaged, assuming that they were in excellent condition for their age prior to this event; and
 - (b) if the Hiring Agreement is a Lease Agreement, the greater of:
 - (i) the Market Value which the Goods would have had if they had not been lost, destroyed or so damaged, assuming that they were in excellent condition for their age prior to this event; and
 - (ii) the Residual Value, but rebated to a value as at the date of termination by application of the Rebate Rate.

16. OBLIGATIONS AT END OF RENTAL

- 16.1 At the end of the Hiring, however it is terminated, we are entitled to possession of the Goods and You must immediately return the Goods to the place specified by us and do all things necessary to transfer to us any registration, licence or certificate in respect of the Goods, including paying all fees, duties or costs connected with doing so.
- 16.2 If the Goods are not returned to us at the end of the Hiring, either with or without our consent, You must pay us by way of rental, or as damages for Your failure to return the Goods, an amount equal to one day's proportion of a Rent Instalment for each day until the Goods are delivered to us.
- 16.3 If You do not return the Goods to us when You are due to do so and we are not able to recover possession of them within a reasonable period of time, we may by notice to You declare them to be lost and You must pay us as compensation for their loss, an amount calculated (as at the date of our notice) in accordance with clause 15.3.
- 16.4 Upon repossession of the Goods, if any software forms part of the Goods, You assign or license to us, so far as You can, all of Your rights in the software with power for us to assign or license such rights to others.

17. RENTAL AGREEMENT: VALUE OF GOODS UPON TERMINATION

17.1 This clause 17 only applies if the Hiring Agreement is a Rental Agreement.

17.2 When the Goods are returned to our possession upon any termination (whether early or not) of the Hiring, You must pay to us any amount which we notify to You as being:

- (a) the difference between the Market Value of the Goods and the Market Value of other goods of that type which are of good condition for goods of a similar age; or
- (b) if we choose this (and if it is less than the amount which would be payable under subparagraph (a)), the cost of repairing the Goods to such a condition.

17.3 Upon an early termination of the Hiring under clause 15.1, we will credit to You any amount by which the net proceeds of any sale of the Goods (after deduction of all costs and expenses of sale, including storage) exceed the amount which we have provided for in our records as the value of the Goods upon expiration of the Minimum Term, but after that value has been rebated by application of the Rebate Rate over the period between the date of termination and the date when the Minimum Term would have expired.

18. LEASE AGREEMENT: DISPOSAL UPON EXPIRY OR EARLY TERMINATION

18.1 This clause 18 only applies if the Hiring Agreement is a Lease Agreement.

18.2 Whenever, on expiry or early termination of the Hiring:

- (a) we repossess the Goods; or
- (b) the Goods are returned to our possession, we must dispose of the Goods as soon as reasonably practicable at the best wholesale or other price we can reasonably obtain at the time. The "**net proceeds**" of this disposal (ie. the proceeds net of the costs of selling, attempting to sell, storing, repairing and maintaining the Goods) are ours to keep and You have no rights to them, except the limited rights to repayment under clause 18.3(b).

18.3 If the "net proceeds" are:

- (a) less than the Rebated Residual Value - You must pay us the difference; or
- (b) more than the Rebated Residual Value - we may set off the excess against any Recoverable Amount which is unpaid. If, after this set-off, some excess remains, we will use it to repay to You any Recoverable Amount You had already paid to us. We will then keep any balance of the excess.

For the purposes of this clause, references to the "**Rebated Residual Value**" are references to the Residual Value stated in the Lease Schedule, rebated to the date of termination by applying the Rebate Rate.

18.4 If we are unable to dispose of the Goods within 2 months of their return or repossession we may obtain a valuation of the Goods and clause 18.2 will then apply as if the Market Value so determined (less the costs of valuing, attempting to sell, storing, repairing and maintaining the Goods) were the "net proceeds".

18.5 Our rights under clause 18.3 are without prejudice to our rights to recover from You any further losses, damages, costs or expenses we suffer, incur or realise upon a later sale of the Goods.

18.6 If we are unable to repossess the Goods, You must pay us the Residual Value rebated (to the date of termination of the Hiring) by applying the Rebate Rate.

19. APPROPRIATION OF PAYMENTS

We may apply any money received from You, or from anyone else on Your behalf, to any money owing by You whether in connection with the Hiring Agreement or otherwise and may disregard any directions You give as to how any moneys are to be applied.

20. PRINCIPAL AND AGENT

20.1 This clause 20 applies if we enter into this Hiring Agreement as agent for a principal ("Principal") which is the trustee of a trust ("Trust"), and applies regardless of whether or not the identity of the Principal has been disclosed to You.

20.2 The Principal enters into this Hiring Agreement only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Hiring Agreement is limited to and can be enforced against the Principal only to the extent to which it can be satisfied out of property of the Trust out of which the Principal is actually indemnified for the liability. This limitation of the Principal's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the Principal in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Hiring Agreement.

The parties other than the Principal may not sue the Principal in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Principal or prove in any liquidation, administration or arrangement of or affecting the Principal (except in relation to property of the Trust).

20.3 The provisions of this clause shall not apply to any obligation or liability of the Principal to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Principal's indemnification out of the assets of the Trust, as a result of the Principal's fraud, negligence or breach of trust.

20.4 It is acknowledged that we are responsible for performing a variety of obligations relating to the Trust, including under this agreement. No act or omission of the Principal (including any related failure to satisfy its obligations or breach of representation or warranty under this agreement) will be considered fraud, negligence or breach of trust of the Principal for the purpose of 20.3 of this clause to the extent to which the act or omission was caused or contributed to by any failure by us or any other person to fulfil its obligations relating to the Trust or by any other act or omission of us or any other person.

20.5 No attorney, agent, receiver and manager has authority to act on behalf of the Principal in a way which exposes the Principal to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Principal for the purpose of paragraph 20.3 of this clause.

21. CERTIFICATES AND NOTICES

21.1 Any notice required to be served under the Hiring Agreement will be deemed to have been properly served if left at or sent by prepaid post to the last known address, or sent by facsimile to the last notified facsimile number, of the addressee.

21.2 Any notice sent by post will be taken to have been received three (3) days after the date of posting. Any facsimile will be taken to have been received when the transmitting machine records that a successful transmission has been made.

21.3 You must advise us as soon as practicable if You change Your address.

22. POWERS YOU GIVE TO US

22.1 You give us and our employees authority to do, without notice to you, anything considered by us to be necessary to give effect to the Hiring Agreement including the completion or correction of any details in the Hiring Schedule or the doing of anything You should have done pursuant to the Hiring Agreement and anything we consider desirable to protect our rights under the Hiring Agreement.

22.2 In particular, You grant us all rights necessary and full power to sue for and recover any claims for loss or damage in relation to the Goods, under any Insurance or otherwise, to compromise any such claim in Your name, or in the names of You and us, and to give effectual releases and receipts in respect of any such claim.

22.3 You indemnify us against any loss, damage, costs or claim incurred or made and arising out of acting as authorised under this clause 22.

23. GENERAL PROVISIONS

23.1 No delay or granting of time or other indulgence by us will affect our rights to enforce Your obligations or exercise any right under the Hiring Agreement.

23.2 No waiver by us of our rights will be implied from anything done or omitted by us. Any express waiver by us of any right will not be deemed to extend to any continuing or recurring default by You of Your obligations.

23.3 Every provision of the Hiring Agreement is independent of every other provision. Any provision which is prohibited or unenforceable in any jurisdiction is, to the extent of the prohibition or unenforceability, deemed removed without invalidating, so far as possible, the remaining provisions.

24. APPLICABLE LAW

This Hiring Agreement is governed by the law of the State of New South Wales and the parties submit to the jurisdiction of the court system of that State.

GUARANTEE AND INDEMNITY TERMS

25. MEANING OF WORDS

In the following Guarantee and Indemnity:

25.1 Words defined in the Lease and Rental Terms have the same meaning when used in this Guarantee and Indemnity and clauses 1.3, 21, 23 and 24 will apply to it (but modified so as to apply to the Guarantor's obligations under these terms);

25.2 the words "**this Guarantee and Indemnity**" and other defined terms do not imply that the obligations of the Guarantor under the indemnity are not entirely separate from the obligations of the Guarantor under the guarantee;

25.3 the expression "**guaranteed money**" means and includes all and any money that is or may become payable by the Customer, the Guarantor or any other person pursuant to the Hiring Agreement or this Guarantee and Indemnity.

26. GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to us the due and punctual:

- 26.1 Payment by the Customer of all money that is or may become payable by the Customer under the Hiring Agreement; and
- 26.2 performance of all the Customer's obligations under the Hiring Agreement, in each case including any variation of payment or other terms under the Hiring Agreement as provided in it or as agreed from time to time by us, with or without the Guarantor's consent.

27. INDEMNITIES

- 27.1 The Guarantor indemnifies and will keep us wholly indemnified against any loss, damage, cost, charge, expense or other liability directly or indirectly incurred by us in any way in connection with or arising from:
 - (a) any actual or attempted breach or default by the Customer of any of its obligations under the Hiring Agreement; or
 - (b) any inability by us to enforce the Hiring Agreement against the Customer for any reason, including that the Hiring Agreement or any part of it may be void, voidable or declared unenforceable.
- 27.2 Each of the indemnities given in clause 27.1.
 - (a) is separate and distinct from the other and from the guarantee under clause 26; and
 - (b) must not be construed otherwise or read down or limited in its effect or otherwise varied by virtue of its inclusion in the same document as the guarantee and any of the other undertakings given by the Guarantor.

28. GUARANTOR'S OBLIGATIONS

- 28.1 The Guarantor must pay any money due to us under this Guarantee and Indemnity on demand and without prior notice being given.
- 28.2 The Guarantor's obligations and our rights and remedies against the Guarantor will continue until all guaranteed money has been paid and discharged in full and this Guarantee and Indemnity has been released and will not in any way be affected by:
 - (a) any release or variation of any obligation under the Hiring Agreement at any time;
 - (b) any time, concession, indulgence, waiver, compromise, abandonment or transfer (whether with or without consideration) of:
 - (i) any right of any person under this Guarantee and Indemnity or any obligations under the Hiring Agreement; or
 - (ii) any other of our rights against the Customer, the Guarantor or any other person;
 - (c) any acquiescence, delay, act, omission, neglect or mistake on our part or by any other person to enforce the Hiring Agreement or this Guarantee and Indemnity;
 - (d) the Customer, the Guarantor or any other person:
 - (i) being or becoming bankrupt, insolvent, placed under administration or in liquidation; or
 - (ii) dying or being dissolved or deregistered or otherwise ceasing to exist, whether or not us assents to this or receives or accepts any dividend from any trustee, administrator or liquidator;
 - (e) any incapacity or change in the legal capacity of the Customer or any other Guarantor including any change in the membership of any firm (whether or not this involves dissolving an existing partnership and forming another) which is the Customer or the Guarantor or of which the Customer or the Guarantor is a member;
 - (f) any amounts guaranteed by this Guarantee and Indemnity being or becoming irrecoverable against any person for any reason;
 - (g) any provision of the Hiring Agreement or any guarantee and indemnity being or becoming void, voidable or unenforceable against any person;
 - (h) any assignment or transfer of any rights in respect of the Hiring Agreement or this Guarantee and Indemnity by us, the Customer, the Guarantor or any assignee of them or any other person;
 - (i) any judgment or order being made against any person;
 - (j) the amount of the guaranteed money increasing or being reduced to nil or otherwise varied;
 - (k) the failure to give notice to or the lack of consent of the Guarantor before or after the happening of any acts or events referred to in this clause; or
 - (l) any other act, omission or default by any person or any other matter or thing which, but for this clause, might discharge, reduce, abrogate, prejudice or otherwise affect the liability of the Customer or the Guarantor.
- 28.3 The Guarantor's obligations are continuing obligations under this Guarantee and Indemnity and are unconditional and irrevocable, remaining in full force and effect until the whole of the guaranteed money has been paid or satisfied and this Guarantee and Indemnity released.

29. RELEASE & REINSTATEMENT OF GUARANTEE & INDEMNITY

- 29.1 Subject to clause 29.2, if all guaranteed money is paid to us and the Guarantor requests it, we will release this Guarantee and Indemnity at the Guarantor's cost seven months after the date of final payment.
- 29.2 If we release this Guarantee and Indemnity, the release will be of no effect and our rights under this Guarantee and Indemnity will not be prejudiced or affected by the release if:
 - (a) any amount paid or any assurances, security or other benefit given to us must be repaid or is revoked or avoided for any reason (including under any laws relating to bankruptcy or insolvency or any legal limitation, disability or incapacity of or affecting any person); or
 - (b) anyone claims that an amount paid or assurance, security or benefit given to us must be repaid or revoked or avoided for any such reason, and in either event:
 - (i) the liabilities of the Guarantor under this Guarantee and Indemnity will be the same as if the release had not occurred;
 - (ii) the Guarantor must do all things requested by us to confirm our rights under this Guarantee and Indemnity; and
 - (iii) the Guarantor must pay to us on demand all costs, charges and expenses incurred by us in connection with the matters referred to in this clause.

30. NATURE OF GUARANTEE & INDEMNITY

- 30.1 This Guarantee and Indemnity:
 - (a) is and remains a principal obligation; and
 - (b) may be enforced against the Guarantor without us first having taken any proceedings against the Customer or any other guarantor to recover the guaranteed money.
- 30.2 This Guarantee and Indemnity is in addition to and does not affect or merge with any other of our rights under any other guarantee, indemnity or security held at any time by us.
- 30.3 The Guarantor is not entitled:
 - (a) to claim or seek the benefit of or require the transfer of the benefit of any guarantee and indemnity or security held by us at any time; or
 - (b) to recover from the Customer any amount paid to us by or on behalf of the Guarantor unless and until all money owed by the Customer to us (whether or not guaranteed) has been fully paid and satisfied.