

Capitalised terms used but not defined in this Agreement shall have the meaning given to them in the Hire Contract to which these Terms and Conditions are affixed.

1. HIRING

- 1.1 Dawsongroup Temperature Control Solutions Limited ("the Company") is hiring and the customer named in the Hire Contract Schedule ("the Customer") is taking on hire the Equipment specified in the Hire Contract ("the Equipment") upon the terms and conditions set out in this Hire Contract. The Customer shall be responsible for ensuring the description of the Equipment as detailed in the Hire Contract is not only accurate but also fully complies with all regulations and/or legislation which may be applicable to the Customer's intended use of the Equipment, including, but not limited to, noise pollution and local planning permission. Equipment specification is subject to change by the Company's supplier.
- 1.2 The term "Equipment" shall mean the equipment specified in the applicable Hire Contract and shall be interpreted to include all extras, accessories, all component parts, data logger, tools and ancillary equipment whether in or on the Equipment together with all replacements (whether temporary or otherwise) or renewals.
- 1.3 The Commencement Date is the date that the last party to this Hire Contract executes this Hire Contract.
- 1.4 The Customer as mere bailee shall not lend, sell, assign, charge, create or permit to exist a security interest, or otherwise encumber or part with the possession of, dispose of or hold itself out as the owner of the Equipment (or any part). The Customer shall not sub-let the Equipment without the prior written consent of the Company.
- 1.5 The Company may require the Customer to provide, in a form acceptable to the Company, information about the quality, specifications and intended use of Equipment to be hired ("Product Information"). The Product Information will inform the Equipment provided to the Customer under this Agreement and the Customer agrees that failure to provide correct or sufficiently detailed Product Information can result in loss of product or poor-quality product. Notwithstanding any other terms of this Agreement, the Company shall have no liability whatsoever to the Customer for any loss suffered by the Customer due to incorrect, inaccurate or otherwise inappropriate Product Information.

2. AUTHORISED SIGNATORY

The person signing this Hire Contract shall be deemed to be an authorised signatory of the Customer. It is the Customer's responsibility to ensure that an authorised signatory signs the Hire Contract and the Company will accept no responsibility for any failure on the part of the Customer to comply with the provisions of this clause.

3. DELIVERY, INSTALLATION, COLLECTION AND TRANSPORT

- 3.1 The Company or its duly appointed agents shall deliver the Equipment to the Delivery Address of the Equipment. The Company or its duly appointed agents may, at the Customer's expense, install the Equipment at the Siting Address, or some other address as agreed in writing. All risk of loss or damage to the Equipment shall pass to the Customer upon delivery in accordance with this clause 3.4. The Customer shall complete the Company's Site Survey Form (if asked to do so by the Company) in advance of any arrangements being made for the delivery of the Equipment. The Customer acknowledges and agrees that it is the Customer's responsibility to complete the Company's Site Survey Form accurately and fully and that the Customer shall be responsible for any errors or omissions in the completed Site Survey Form. The Customer further acknowledges and agrees that the Company shall not be obliged to deliver the Equipment if the Site Survey Form has not been completed by the Customer in accordance with this clause 3.1.
- 3.2 The Equipment will be installed and used by the Customer at the "Siting Address", being the final address that the Equipment will be located at and used for the term of this Agreement.
- 3.3 If the Siting Address and the Delivery Address are different, the Customer shall be solely responsible, and shall bear all risk in, the transportation of the Equipment from the Delivery Address to the Siting Address.
- 3.4 Delivery of the Equipment shall occur when the Equipment passes into the control and possession of the Customer, being when the Customer collects the Equipment from the Delivery Address unless otherwise agreed by the parties in writing.
- 3.5 The Company shall use competent personnel with appropriate operating certificates to lift the Equipment.
- 3.6 The Customer shall at its own expense comply with any applicable laws and any local authority requirements and ensure that adequate access (including satisfactory foundations for the Equipment) is available to and from the Siting Address.
- 3.7 The Customer shall be responsible for properly connecting the Equipment to the power supply and for ensuring that the Customer has an appropriate power supply system for the Equipment at the Siting Address. The Company strongly recommends the Customer instruct an electrician for independent advice. The Company reserves the right to charge for any additional electrical cabling requested by the Customer, which shall be supplied at the risk of the Customer. The Customer shall also be responsible for connecting the Equipment to all other services, including (without limitation), water and drainage (if applicable).
- 3.8 Lead times given for delivery of the Equipment to the Delivery Address are given in good faith and as accurately as possible, but are not guaranteed. The Customer agrees to accept delivery at the Delivery Address and immediately after delivery the parties shall both carefully examine the Equipment to ensure that any damage or defect apparent is noted on the check out/in document and the Customer must take due note of any customer operation manuals supplied by the Company with the Equipment ("Customer Operation Manuals").
- 3.9 Subject to first receiving a Site Survey Form accurately completed by the Customer (if asked to do so by the Company), the Company shall notify the Customer in writing of the estimated delivery date for the Equipment. The Customer shall be obliged to accept delivery of the Equipment on the date notified by the Company. If, in the Company's sole opinion, the Customer unreasonably refuses or fails to accept delivery of the Equipment on the notified delivery date, the Customer shall be liable for, and the Customer agrees to pay to the Company, any direct costs incurred by the Company, which shall be payable on demand by the Company.
- 3.10 The Customer shall pay the Company all or any of the Supplementary Charges on demand in the amounts specified in the Hire Contract and any other charges agreed at any time in writing by both parties.
- 3.11 If the Customer delays or cancels the agreed delivery, return or collection date of the Equipment, or the Customer unreasonably refuses or fails to accept delivery of the Equipment on the notified delivery date, or in the event of delivery, return or collection being cancelled due to circumstances beyond the Company's control (such as, but not limited to, extreme weather conditions of any of the circumstances described in clause 12.4), the Company reserves the right to charge the Customer for all direct costs the Company

incurs as a result of such delay or cancellation and the Customer agrees to reimburse such costs on demand. The Company shall not be liable for any delays in delivery.

- 3.12 The Customer agrees to indemnify the Company for any losses suffered by the Company arising from or in connection with any time spent waiting by the Company's representatives (including the Company's personnel) during delivery, commissioning/installation, return and collection of the Equipment.

4. HIRE PERIOD

- 4.1 Unless otherwise agreed in writing by a director of the Company, the hire period shall be the Minimum Hire Period ("the Initial Term") and any part day arising upon the return of the Equipment to the Delivery Address shall be charged as a whole day.
- 4.2 The Initial Term shall begin either on the Estimated Delivery Date specified in the Hire Contract or upon delivery, whichever is later. The Estimated Delivery Date is an estimate only and the Company shall not be liable to the Customer for any delay or failure to make delivery on such Delivery Date or within such period.
- 4.3 The term of the Hire Contract shall be automatically extended ("Extended Term") at the end of the Initial Term and at the end of each Extended Term for a period equivalent to the Initial Term, unless the Customer gives the Company written notice to terminate the Hire Contract, such termination will take effect upon expiry of the Initial Term or the relevant Extended Term. If the Initial Term is greater than 12 months, the Extended Term shall be subject to a cap of 12 months on each occasion.
- 4.4 The Minimum Notice for Termination shall be as specified in the Hire Contract.
- 4.5 If the Customer cancels or defers an agreed return date for the Equipment after it has served notice in accordance with clause 4.3, the Company may treat the notice as unequivocally rescinded and the provisions of clause 4.3 will apply as if notice had not been served.

5. CHARGES AND PAYMENT

- 5.1 The price of the Equipment shall be the aggregate prices set out in the Hire Contract and include the Hire Charges and any Supplementary Charges. Unless otherwise stipulated in writing, the price and all other amounts in this Hire Contract are exclusive of goods and services tax pursuant to the Goods and Services Tax Act 1985, which the Customer must pay to the Company in addition to any other prices payable. Payment will be made in accordance with the Payment Terms specified in the Hire Contract.
- 5.2 Hire Charges specified in the Hire Contract are calculated on the strict basis of the following factors:
- 5.2.1 There is no variation in the agreed Payment Terms and/or Product Information completed by the Customer before signature of the Hire Contract (if applicable).
- 5.2.2 The purchase price of the Equipment for the Company by the Company's supplier not only remaining unchanged but also qualifying for capital allowances at the same rate as they apply at the date of the Hire Contract to the actual date of purchase.
- 5.2.3 There is no variation in legislation not only specific to the use and operation of the Equipment but also in relation to both the rate of corporate income tax applicable and the availability of capital allowances.
- 5.2.4 The Customer acknowledges that the Company shall not suffer any balancing charge or any similar charge and will not otherwise lose the benefit of writing down allowances at any time by virtue of the Customer ceasing to use the Equipment for qualifying purposes.
- 5.2.5 The Company reserves the right to amend the Hire Charges, or recharge as appropriate, by written notice to the Customer should any or all of the above factors vary between the date of the Hire Contract and expiry of the Initial Term or any Extended Term (as the case may be).
- 5.3 The Customer shall immediately pay upon receiving written demand any of the Supplementary Charges and the Holding Deposit specified in the Hire Contract Schedule. All Hire Charges shall be paid in accordance with the Payment Terms. The Company may require the Customer to pay by any equivalent payment method or currency as the Company shall stipulate in the Payment Terms within a reasonable time period. The Customer shall not revoke or amend the Payment Terms (including the Company's chosen payment method, payment terms or currency) without the Company's express prior written agreement. The Company reserves the right in its absolute discretion to increase the Hire Charges as a condition of any request of the Customer to vary the Payment Terms.
- 5.4 The Hire Charges, the Supplementary Charges and all other sums due under this Hire Contract are to be paid by the Customer without deduction, counterclaim or set-off.
- 5.5 It is the Customer's responsibility to request the return of its Holding Deposit from the Company. The Customer must make a written request for the return of its Holding Deposit within 60 days of the termination of the Hire Contract to which the deposit relates. The Holding Deposit will then be returned to the Customer on the strict basis that there are no other outstanding sums due from the Customer to the Company. If there are outstanding sums due from the Customer following return or collection of the Equipment, the Company reserves the right in its absolute discretion to use the Holding Deposit to off set against such outstanding sums. In any event, if the Customer fails to claim in writing the return of its Holding Deposit within 60 days, the Holding Deposit will then transfer to and become the property of the Company.
- 5.6 The Company will take all reasonable steps to ensure that any overpayments made by the Customer are returned to the Customer without delay, where such overpayments are reasonably apparent. Notwithstanding this, it is the Customer's responsibility to request the return of any overpayments made by the Customer to the Company. The Customer must make a written request for the return of an overpayment as soon as possible after the date of the said overpayment and in any event no later than 60 days after the termination of the Hire Contract of the Equipment to which the overpayment relates. Where the overpayment is not due to an error on behalf of the Company, the Company will refund the overpayment less an administration charge to cover the reasonable costs incurred by the Company. If the Customer fails to claim in writing the return of the overpayment within the aforementioned timescale, the overpayment will then transfer to and become the property of the Company.
- 5.7 If the Customer makes any payment which is not made in accordance with the Payment Terms, including by the required due date or in the required currency, the Company may charge the Customer an administration fee to cover the costs incurred by the Company, and this administration fee shall be payable by the Customer to the Company on demand.
- 5.8 If any sum payable under this Hire Contract (and whether the same shall be payable in accordance with clause 5.2 or otherwise) is not paid by the due date for payment as set out in the Payment Terms then the Company shall be entitled (without prejudice to any of the Company's other rights) to require the Customer to pay interest on the arrears at the rate of 5 % per annum. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after any judgment. The Customer shall pay the interest immediately on demand by the Company.
- 5.9 Punctual payment of all charges shall be the essence of this Hire Contract and the Company shall be entitled at its discretion to terminate the Hire Contract in accordance with clause 10 if any sum payable shall remain unpaid for more than seven days after having become due in accordance with the Payment Terms.

- 5.10 The Company shall submit invoices for any sums payable under this Hire Contract to the Customer's billing email address set out in the Hire Contract.
- 5.11 In addition to changes pursuant to clause 5.1, the Hire Charges shall be subject to review at the sole discretion of the Company at 12month intervals. The Company shall give 30 days' written notice to the Customer of any increase in the Hire Charges as a result of such review.

6. USE AND OPERATION

- 6.1 Unless otherwise agreed by the Company in writing, the Customer shall neither move, shift nor alter the position of the Equipment from the original installation position at the Siting Address (or as otherwise agreed by the parties in writing) nor affix the Equipment to any land or building. If the Customer breaches this clause 6.1, the Customer shall be responsible for the costs of subsequent removal or detachment of the Equipment and any defects or damage to the Equipment which has occurred as a consequence of the Customer moving, shifting, altering or affixing the Equipment.
- 6.2 The Customer shall read and must comply with any Customer Operation Manuals supplied with the Equipment.
- 6.3 The Customer shall not permit the Equipment to be operated in circumstances where the person so operating, or where the load stored, or where the state or condition of the Equipment or where any factor or consideration gives rise to circumstances in which a fully comprehensive insurance policy covering inter alia or specifically the Equipment and drawn on normal commercial terms could be invalidated in part or in whole.
- 6.4 If the Equipment is to be sited by the Customer inside a building, it shall be the Customer's responsibility to supply and install adequate ventilation systems. If the Customer fails to supply and install adequate ventilation systems for the Equipment and such failure causes loss or damage to the Equipment or any component part thereof, the Customer shall indemnify and reimburse the Company upon demand for all costs incurred through repairing or replacing the Equipment or component part. Unless stated otherwise in the Hire Contract, the Equipment does not include fresh air ventilation systems.
- 6.5 The Customer shall ensure that all operators of the Equipment are completely familiar with and fully competent to operate the Equipment and all dimensions and all component parts of the Equipment.
- 6.6 The Customer shall only use the Equipment for purposes which have been considered suitable by the Company and the Customer shall comply with all laws and all legal and other obligations relating to operation and use of the Equipment. The Customer shall procure that all of its employees, agents, contractors and personnel exercise all reasonable care and skill in and about the use of the Equipment. The Customer shall immediately notify the Company upon any material change in the use of the Equipment.
- 6.7 The Customer shall not store loads in excess of the load capacity, nor store any goods which may damage the Equipment or render it unfit to store other goods. The Customer shall distribute all loads evenly. The Customer shall be responsible for any corrosive damage to the Equipment caused by fumes, vapour, spillage and the like produced by any goods stored in, or in proximity to, the Equipment. The Customer and/or any other person shall not remove or deface any plates or other markings or identity signs placed upon the Equipment by the Company.
- 6.8 The Equipment shall neither be used nor operated in a manner likely to cause undue wear and tear or depreciation. The Equipment shall neither be used nor operated whilst it is not operational or liable to cause damage to any person or property.
- 6.9 It shall be the Customer's responsibility to electrically test the Equipment at such intervals as required by any local regulations in the jurisdiction or any applicable health and safety legislation. Upon request, the Company may carry out electrical testing on behalf of the Customer at the Customer's cost.
- 6.10 If applicable, the Customer agrees that it shall be solely responsible for monitoring the performance of the Equipment through any on-line remote monitoring system. The Company shall not be responsible for any breakdown in or disruption to the service of the on-line remote monitoring system.

7. INSURANCE AND LIABILITY

- 7.1 The Customer shall keep the Equipment insured from either delivery or the Commencement Date whichever is earlier and ending upon return of the Equipment to the Delivery Address or collection of the Equipment by the Company from the Siting Address. Such insurance shall be for all risks including inter alia all loss and damage howsoever caused (including confiscation or impounding of the Equipment howsoever this occurs) to the full replacement cost on a new for old basis and in respect of all liabilities to third parties of whatever nature with reputable insurers ("Insurers") and the Customer will pay all premiums and shall upon demand produce to the Company evidence of payment of the premiums and a copy of the policy. The policy must note the Company as an interested party in the insured Equipment. The Customer shall procure that the Insurers do not make any payments to the Customer until the Company's security interest has been released. The Customer irrevocably appoints the Company to be the Customer's agent for the purpose of receiving all monies payable under the policy or policies and for giving good and full discharge.
- 7.2 If the Equipment is adjudged by the Company to be lost, stolen or destroyed, or damaged beyond economic repair, the Customer shall pay to the Company the full replacement cost of the Equipment on a new for old basis. The Customer acknowledges that the full replacement cost on a new for old basis represents a justifiable and genuine pre-estimate of the financial loss the Company will incur in the event of the loss, theft, destruction or damage of the Equipment.
- 7.3 If clause 7.2 does not apply, the Customer agrees to pay upon demand the total cost of replacing or repairing any loss of or damage to the Equipment (whether or not recovery is made from its insurers) which has occurred while the Equipment is in the custody or control of the Customer (fair wear and tear only excepted) and to indemnify the Company for all loss, expenses, costs, fines, charges or compensation arising from the existence and use of the Equipment during the Hire Period.
- 7.4 The Customer agrees to pay continuing Hire Charges if the Equipment is unfit for placing on hire as a result of any loss or damage to or fault or deterioration in the Equipment, which has occurred while in the Customer's custody or control (fair wear and tear excepted). For the purpose of this clause, the Company will deem the Equipment to be fit for placing on hire if the Company, in its absolute discretion, is satisfied that the Customer has returned the Equipment in a condition as shall in all respects be consistent with the full and due performance by the Customer with all obligations relating to repair, maintenance and condition contained in this Hire Contract. The Customer's liability for continuing Hire Charges shall extend for such period as shall be required to affect any repairs or other work necessary to make the Equipment fit for placing on hire following either the Customer or its insurers written authorisation to pay and effect any repairs or other work. Alternatively, the Customer's liability shall extend for such period as it might reasonably take for the Company to purchase a new replacement Equipment following receipt of the full replacement cost from either the Customer or its insurers upon the Equipment being adjudged by the Company to be lost, stolen or destroyed, or damaged beyond economic repair, provided that such period shall not extend beyond the Initial Term or the Extended Term (as the case may be)

- 7.5 To the maximum extent permitted by law, the Company shall not be liable to the Customer, any third party or to third party property for loss (whether direct or indirect) including loss of profits, business or anticipated savings, or for any indirect or consequential loss or damage, caused by the delay, failure, breakdown, malfunction, use or other circumstance, of the Equipment or any component part and the Customer agrees to indemnify the Company against such loss suffered by a third party.
- 7.6 The Company accepts no responsibility or liability for any loss, delay and damage to any goods or articles carried, deposited or left standing in or on the Equipment or at its premises and the Customer agrees to release and indemnify the Company from and against all claims whatsoever arising. This is because the Customer selected the Equipment in reliance of its own skill and judgement and acknowledges that the Company is not the manufacturer.
- 7.7 The Customer will at the Company's reasonable request, do all that is required by the Company for the enforcement of any rights or remedies against other parties that the Company may have in connection with the Equipment.

8. ACCIDENTS AND PROSECUTIONS

The Customer shall immediately report any accident, loss or damage, or knowledge of any pending claim or the like involving the Equipment to the Company and/or its Insurers, and also to the Police or other appropriate authority within the time prescribed by law. The Customer shall supply such information, drawings and assistance in connection with the accident, loss or damage as the Company or its Insurers may require.

9. REPAIRS AND MAINTENANCE

- 9.1 The Customer shall be responsible for keeping the Equipment operational and carrying out all necessary daily running maintenance tasks and safety checks including but, without limitation, all actions stipulated within any Customer Operation Manuals supplied with the Equipment.
- 9.2 The Customer shall immediately report to the Company every defect in or want of repair to the Equipment arising or becoming apparent during the Initial Term and any Extended Term and shall make the Equipment available to the Company (or its appointed agents) for the purpose of effecting any necessary repairs. The Customer shall be responsible for any repair costs and associated charges (such as travel time) which are not covered by the manufacturer's warranty supplied with the Equipment.
- 9.3 The Customer shall not without the Company's consent repair or service the Equipment or permit any other person so to do. This is to protect the Company's warranties as owner of the Equipment which could otherwise be invalidated. Also the Customer shall not permit any lien for repairs to be incurred without first receiving the Company's express written authority for such lien. Any cost incurred for such repair or service without the Company's consent shall be the Customer's responsibility. In the context of this clause the Customer acknowledges that such consent shall consist only of the Company's official written order the extent of which shall be limited solely to its contents. Alterations, additions or modifications of any kind are not permitted to the Equipment.
- 9.4 The Customer is responsible for and shall reimburse and indemnify the Company upon demand for all excessive wear, loss, contamination, load spillage, deterioration and damage of whatsoever nature (fair wear and tear only excepted) to the Equipment. For the purpose of these conditions, the phrase fair wear and tear shall be taken to include scratches and scuffs on the Equipment, and minor scratches to paintwork if the paint surface is not broken. The following will fall outside fair wear and tear - scrapes, scratches and marks to the paintwork (howsoever caused) where polishing will not restore the finish and repainting is necessary and dents or other impact damage to bodywork and any stains, contamination or corrosion resulting from the load, salt, oil, glue, chemicals or other matter which cannot be removed from the Equipment and any damage wear and tear which is excessive having regard to the age of each Equipment.
- 9.5 The Customer shall be responsible for any additional charges incurred by the Company in carrying out maintenance obligations to the Equipment due to the Equipment being made available to the Company by the Customer outside reasonable working hours. Furthermore, if due to the location of the Equipment or if due to the express requirement of the Customer the Company is required to use special access equipment (such as, without limitation, ladders and access hoists) to safely service and/or maintain the Equipment, the Customer shall reimburse the Company for the cost of procuring any necessary special access equipment.
- 9.6 The Customer agrees to indemnify the Company against any time spent waiting by the Company's representatives for any service, repairs and replacements.
- 9.7 Subject to the provisions of clauses 6, 7 and 9 the Company shall be responsible for comprehensive maintenance cover and effecting repairs to or servicing the Equipment due to fair wear and tear.

10. EARLY TERMINATION

- 10.1 The Company shall have the right to terminate the Hire Contract on three days' written notice at any time (whether before or after expiry of the Initial Term) and on termination the security interest granted in clause 13.2 will be immediately enforceable (in which case, the Company will have all rights under Part 9 of the Personal Property Securities Act 1999 (New Zealand) ('PPSA')) and the Company may immediately or at any time thereafter without giving any notice to the Customer enter the Siting Address or any other land or premises where the Equipment may be situated and repossess the Equipment in any of the following circumstances: (i) The Company has bona fide doubts in regard to the Customer's financial position or (without prejudice to the foregoing) upon any judgment being had and obtained against the Customer or if the Customer shall be or become the subject of an order for bankruptcy, or insolvent, or call a meeting of or make any arrangement, compromise or composition with its creditors, or have any execution, distress, attachment, or other legal process levied against it, or goes into liquidation or have a petition for compulsory winding up presented or an administration order made against it, or have a receiver, statutory manager, or similar officer appointed over the whole or any part of its undertaking or assets or the Customer itself, or any such insolvency mechanism as may be applicable in the Customer's operating jurisdiction; (ii) The Customer renders any action which the Company reasonably considers constitutes either a serious or material breach of this Hire Contract which cannot be remedied, including inter alia failure to pay after demand any monies which the Company considers to be due to it under this Hire Contract, or a serious or material breach of this Agreement that can be remedied but that has not been within 10 days of notice to remedy being given to the Customer; (iii) The Customer ceases or threatens to cease to carry on business or there is a change of ownership; (iv) The Customer is in breach of any of the terms and conditions of any other present or future agreements with the Company, its holding company or any associated or subsidiary company of the holding company; (v) The Company believes the Equipment may be at risk (as such term is defined in section 109 of the Personal Property Securities Act 1999 (New Zealand)), for any reason whatsoever; (vi) The Company reasonably apprehends that any of the above mentioned events is about to occur.
- 10.2 Alternative to the Company's right to terminate the Hire Contract in accordance with clause 10.1 above, in the event that any of the circumstances in clause 10.1 (i) to (vi) above occur, the Company shall have the right to demand from the Customer (and the

Customer shall be obliged to pay to the Company) a deposit to a value decided by the Company but in any event not exceeding the equivalent of three months' Hire Charges. For the avoidance of doubt, this deposit will be additional to the Holding Deposit the Customer has already paid to the Company.

- 10.3 In the event that the Hire Contract is terminated by the Company under clause 10.1 the Company will only release the Customer from its obligations under this Hire Contract upon payment of a sum equal to all loss and/or damage suffered by the Company. Such loss and/or damage to be calculated as all rental charges, interest, costs associated with repossession of the Equipment pursuant to clause 10.1 and other payments which were due to be paid before the termination date but not yet paid plus the rest of the rental charges that the Customer would have paid over the full Initial Term or Extended Term (as the case may be) discounted at a rate of 10% to reflect early receipt plus, if for any reason the Equipment is not returned to the Company, the depreciated value of the Equipment at the date of expiry as assumed by the Company. Furthermore, the deposit paid by the Customer (if any) shall be forfeited and treated as a contribution towards the loss and/or damage suffered by the Company without prejudice to the Company's right to recover from the Customer such loss and/or damage which the Company may suffer or incur by reason of the Customer's default.

11. TERMINATION

- 11.1 Either party may terminate the Hire Contract by giving the required Minimum Notice for Termination as specified in the Hire Contract to the other party and such termination will take effect on the expiry of the Initial Term or the Extended Term (as the case may be) or as otherwise agreed by the parties in writing. If neither party gives the other party written notice in accordance with the foregoing, then the provisions of clause 4.3 will apply.
- 11.2 For the avoidance of doubt, where the Customer retains possession and continues using the Equipment after expiry of the Initial Term for any Extended Term, the Customer's duties and obligations under the Hire Contract (including but without limitation to the payment of Hire Charges) shall continue in full force and effect until the Hire Contract is terminated by either party in accordance with clause 11.1 or by the Company in accordance with clause 10.1.
- 11.3 Upon termination of the Hire Contract for any reason and in any manner whatsoever, the Customer shall forthwith make available to the Company the Equipment at the Delivery Address at its own risk and in as good condition, including plain livery, cleanliness and working order (fair wear and tear only excepted) as when delivered by the Company at the Commencement Date, at the Customer's expense. The Company has the right to inspect the Equipment to ensure the Customer has complied with its obligations under this Agreement prior to accepting return of, or collecting, the Equipment. For the purpose of this clause the Equipment shall not be deemed returned until both parties jointly sign the check out/in document immediately upon safe collection or return of the Equipment (unless the Customer for its own reasons is not represented and when in this case, the return or collection shall proceed in its absence the Customer will be bound by the outcome). This does not limit the Company from making a more thorough check of the Equipment within a reasonable time period after the Equipment has been returned to the Company's custody and control, and bringing any less apparent defects to the Customer's attention which shall be the Customer's responsibility. For the avoidance of doubt, the Company shall not be responsible for reinstating, rebuilding, redecorating or making good the Customer's premises (including any building the Equipment was attached to) following removal and return of the Equipment.
- 11.4 In the event that the Customer does not return the Equipment upon termination of the Hire Contract to the Delivery Address within a reasonable time frame (howsoever determined) and in so doing retains possession of the Equipment without the Company's prior consent then the Company shall use all lawful force as shall be necessary to effect recovery. Any action the Company takes shall not prejudice the Company's rights to recover from the Customer any monies due under the Hire Contract or this Agreement and/or damages for any breach together with all legal and other costs relating to the recovery of the Equipment and monies due. The Customer shall pay legal costs on an indemnity basis.
- 11.5 The Customer undertakes to remove all property from the Equipment upon termination of the Hire Contract and disconnect the Equipment from the power supply before the Equipment is returned to or recovered by the Company. No liability howsoever arising shall be incurred by the Company in relation to any loss of or damage to property remaining in or upon the Equipment after such termination which property (if any) the Company shall at its discretion be entitled to dispose of. In the event of such disposal or in the event of any loss of or damage (howsoever caused) to such property the Customer shall indemnify the Company against all claims and demands made by any third party. Furthermore, the Customer shall indemnify the Company in full in respect of any costs incurred by the Company disposing of such property.

12. OTHER TERMS

- 12.1 The parties to this Hire Contract agree that no rights or benefits shall be created or granted by this Hire Contract upon any person who is not a party to the Hire Contract, whether under Part 2 of the Contract and Commercial Law Act 2017 or otherwise. In particular, the Company irrevocably appoints any third party paying any charges on behalf of the Customer to be its bare agent for the purpose of monies paid.
- 12.2 The Company may assign any of its rights, obligations or interests under this Hire Contract at any time. The Customer may only assign any of its rights, obligations or interests under this Hire Contract with prior written consent of a Director of the Company.
- 12.3 A waiver of any right or remedy under this Hire Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Company to exercise any right or remedy provided under this Hire Contract or by law shall constitute a waiver of that right or any other right or remedy, nor shall it preclude or restrict the further exercise of that right or any other remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that right or any other remedy.
- 12.4 The Company shall be relieved of its obligations under this Hire Contract to the extent that performance is prevented, frustrated, impeded or delayed in consequence of any Act of God, pandemic, epidemic, consequence of war, insurrection, terrorism, confiscation, requisition, destruction of or damage to the Equipment by or under the order of any government or public or local authority, riots, civil commotion, strikes whether or not by the Company's employees, lock outs or stoppage of or restraint of labour from whatever cause whether partial or general, fire or any cause whether or not a like or similar nature beyond the Company's control.
- 12.5 If either party changes its registered office and/or normal place of business prior to the termination of the Hire Contract it shall give written notice of the change to the other. Any notice or demand shall be given in written English addressed to the Company at its registered office and the Customer at its registered office and/or normal place of business. Such notice or demand (other than money) shall be deemed to be received i) if sent by post 48 hours after posting, providing that the address is properly stated and first class postage is pre-paid; ii) if sent by facsimile transmission at the time of sending and iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business

hours means 9.00 to 17.00 Monday to Friday on a day that is not a public holiday in the place of receipt. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 12.6 This Hire Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of New Zealand. The parties irrevocably agree that the courts of New Zealand, shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Hire Contract or its subject matter or formation (including non-contractual disputes or claims).
- 12.7 If any court or competent authority finds that any provision of this Hire Contract (or any part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Hire Contract shall not be affected. The same applies in the event of a contractual gap.
- 12.8 The Customer authorises the Company to collect, retain and use any information about the Customer provided by the Customer. Any information held about the Customer or about negotiations may be used for the purpose of providing complying with this Agreement, including providing the Equipment and also for direct marketing to the Customer, conducting surveys, receiving feedback, credit assessment, registered with credit agencies, used to assist fraud prevention and to trace debtors, disclosed to actual or potential assignees or disclosed to the Company's holding company or any associated or subsidiary company of the holding company. Save as aforesaid the parties undertake to keep confidential the terms of this or any agreement.
- 12.9 In this Hire Contract the clause headings are inserted for convenience only, the singular includes the plural and the masculine shall include the feminine (vice versa).
- 12.10 This Hire Contract shall embody the entire agreement in relation to its subject matter unless such variations are recorded in any document marked as being supplemental and signed by a duly authorised signatory of the Customer and by a director of the Company. Each party acknowledges that in entering into this Hire Contract it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Hire Contract.

13. PERSONAL PROPERTIES SECURITIES ACT 1999

- 13.1 Unless otherwise defined in this Hire Contract, the terms "accession", "collateral", "financing statement", "security interest", and "verification statement" have the meaning given to those terms in the PPSA, and in this Clause 13 section references are references to sections of the PPSA.
- 13.2 The Customer agrees that hire of the Equipment under this Hire Contract creates a security interest in the Equipment to secure the full payment of hire charges and all other sums due and payable under this Hire Contract, and the performance of all the Customer's other obligations to the Company in this Hire Contract. This Hire Contract constitutes a security agreement for the purposes of the PPSA.
- 13.3 The Customer will provide to the Company all information requested to ensure that registration of the security interest in the Equipment granted in this Hire Contract constitutes a fully effective and perfected security interest in the Equipment and its proceeds which will have the priority over all other security interests in the Equipment and as contemplated by this Hire Contract.
- 13.4 The Customer shall reimburse the Company on demand all fees and expenses incurred by the Company in relation to the filing and maintenance of a financing statement in connection with the Hire Contract.
- 13.5 The Customer will not, without giving the Company at least 20 business days' notice:
- a. change its name, such notice to provide details of the proposed new name; or
 - b. allow anything to happen in respect of it or any Equipment that would cause any information in a financing statement to be different if it were re-registered.
- 13.6 The Customer has no rights under, or by reference to, sections 114(1)(a), 133 and 134.
- 13.7 The Customer waives its rights to:
- a. receive a statement of account under section 116;
 - b. receive notice of any proposal of the Company to retain collateral under section 120(2);
 - c. object to any proposal of the Company to retain collateral under section 121;
 - d. not have goods damaged if the Company removes an accession under section 125;
 - e. not be reimbursed for damage caused if the Company removes an accession under section 126;
 - f. refuse permission to remove an accession under section 127;
 - g. receive notice of the removal of an accession under section 129;
 - h. apply to the court for an order concerning the removal of an accession under section 131; and
 - i. receive a verification statement under section 148.