

1. INTRODUCTION

These Rental Terms and Conditions ("Terms and Conditions") are to be read together with a Rental Schedule including the Special Conditions, if any ("Rental Schedule") signed by the Customer, by the Guarantor, if any, and by ORIX. When the Rental Schedule has been signed by the Customer, each Guarantor and ORIX, it will create, on the date it is signed by ORIX, a binding rental agreement in respect of the Equipment made up of the terms and conditions set out in the Rental Schedule and these Terms and Conditions ("Rental Agreement").

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In the Rental Agreement unless the context otherwise requires —

"**Actual Term**" means the period encompassed by the Date Out and the Date In shown in the Rental Schedule.

"**Authorised Officer**" means —

- (a) with respect to a Customer that is a corporation, firm, unincorporated association, partnership (whether incorporated or not), joint venture, governmental, semi-governmental or statutory body or any other entity (whether having a separate legal existence or not) any person who is employed by or connected with the Customer whose title of office includes "Director", "Principal", "Owner", "Partner", "Executive", "Co-ordinator", "Controller", "Secretary" or "Manager" (or cognate expression) as well as, where applicable, any one of the persons whose name and signature appear in the most recent Authorised Officer Notification Form duly executed by the Customer and sent to ORIX; and
- (b) with respect to ORIX, any person who has been authorised by ORIX to execute on behalf of the company the Rental Agreement or any documentation, notices or certificates with respect to the Rental Agreement.

"**Authorised Officer Notification Form**" means such form as ORIX may in its discretion require the Customer to complete for the purposes of nominating Authorised Officers.

"**Base Rental**" means the amount shown as such in the Rental Schedule.

"**Business Day**" means a day other than a Saturday or Sunday when trading banks are open for business in Sydney and any other place where an action is to take place. Without limiting the generality of the foregoing, Sydney is the place where banking transactions will be effected.

"**CDWRF**" means Collision Damage Waiver Reduction Fee.

"**Claim**" means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Equipment, any delay or other failure in supplying any services of the Rental Agreement, including without limitation, any defect in or malfunction of any Equipment.

"**Collision Damage/Loss Liability Charge**" is the amount the Customer must pay in case of each and every occasion of damage or accident as specified in the Rental Schedule.

"**Collision Damage Waiver Reduction Fee**" is the fee payable by the Customer to ORIX, if ORIX agrees (in its absolute discretion) to reduce the Collision Damage/Loss Liability Charge that would, otherwise, be payable by the Customer.

"**Corporations Act**" means the Corporations Act 2001 (Cth).

"**Customer**" means any person or persons named as such in the Rental Schedule and, if there is more than one, means each of them separately and every two or more of them jointly. Where such a person is named in the Rental Schedule as a trustee, "Customer" means the trustee of the trust named in the Rental Schedule.

"**Damage Costs**" means costs reasonably incurred by ORIX to repair minor damage to the Equipment while the Customer has custody or control of it.

"**Default Interest Rate**" in relation to a calendar quarter means the aggregate of 4% per annum plus the rate of interest determined by Westpac Banking Corporation on the first day of that calendar quarter as the rate to apply on that day to overdrafts and term loans, and usually published in major Australian metropolitan newspapers as its Reference Lending Rate ("RLR"). Should such rate cease to be determined or, in the opinion of ORIX such rate becomes inappropriate, unfair or incapable of application, the RLR will mean the rate reasonably determined by ORIX to be the appropriate equivalent rate having regard to prevailing market conditions.

"**Deposit**" means the amount shown as such in the Rental Schedule.

"**Driver**" means the person/persons specified in the Rental Schedule.

"**Equipment**" means each item of Equipment specified in the Rental Schedule and any accessories, devices or apparatus affixed to or installed or incorporated into such Equipment.

"**Early Return Fee**" and "**ERF**" means the fee payable to ORIX to compensate it for loss of earnings, if Equipment for which the Scheduled Term is six (6) months or more is returned to ORIX before the Scheduled Term has expired. Such fee will be the aggregate of —

- (a) the difference between ORIX's casual daily hire rate for the Actual Term and the daily equivalent of the Base Rental multiplied by the lesser of the number of days in (i) the difference between the Actual Term and the Scheduled Term and (ii) 25% of the Scheduled Term; and
- (b) reasonable costs incurred by ORIX in relocating the Equipment to the original Rental Location.

"**Essential Term**" means any term of the Rental Agreement relating to —

- (a) the payment of money;
- (b) the care, preservation or maintenance of the Equipment;
- (c) insurance of the Equipment (if clause 8.2 applies);
- (d) creation of, or capability of ORIX to enforce, a Security Interest including, without limitation, clause 14 or
- (e) the use or return of the Equipment.

"**Event of Insolvency**" means in relation to a Relevant Person —

- (a) a receiver, manager, liquidator, provisional liquidator, receiver and manager, trustee, administrator, Controller (as that expression is defined in section 419(1) of the Corporations Act) or similar officer is appointed in respect of any asset of a Relevant Person;
- (b) any application (not being an application withdrawn or dismissed within 7 days) is made for an order or a meeting is convened, or a resolution is passed, for the purpose of —
 - (i) appointing a person referred to in paragraph (a);
 - (ii) winding up a Relevant Person; or
 - (iii) proposing or implementing a scheme of arrangement in respect of a Relevant Person;
- (c) any event or conduct occurs which would enable a court to grant a petition for the bankruptcy of a Relevant Person;
- (d) a moratorium of any debts of a Relevant Person or an arrangement under Part X of the Bankruptcy Act 1966 with a Relevant Person's creditors or any similar proceeding or arrangement by which the assets of a Relevant Person are subjected to the control of a Relevant Person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for;
- (e) a Relevant Person becomes, is, or is deemed under any applicable law to be, insolvent or unable to pay its debts or any event or circumstance occurs, whether in relation to the business or affairs of the Relevant Person, which in the reasonable opinion of ORIX indicates that the Relevant Person will be unable or unwilling to comply with its obligations under the Agreement; or
- (f) any writ of execution, garnishee order, Mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a Relevant Person.

"**Fair Wear and Tear**" means the deterioration of Equipment through general use under the normal conditions for which the Equipment is designed and having due regard to the conditions in which it is agreed the Equipment will operate. It does not include items caused by abuse or neglect.

"**Good Condition**" means in good condition and appearance throughout and in sound mechanical order, free from all of the following —

- (a) body or coach work damage;
- (b) paint scratches (other than stone chips or scratches not through to the metal);
- (c) upholstery or trim damage or tearing;
- (d) glass damage which might prejudice re-registration or affect roadworthiness of the Equipment;
- (e) signwriting or other distinctive markings;
- (f) major component failure;
- (g) damage not repaired to a normal commercial standard; and
- (h) driver abuse and/or neglect,

otherwise than noted on the Hire & Inspection Form at the time of delivery or arising by reason of Fair Wear and Tear having regard to the distance the Equipment has travelled or the hours for which it has been used.

"**GST**" and "**GST Law**" have the meanings they are given in *A New Tax System (Goods and Services Tax) Act 1999*, except that "GST Law" includes any applicable rulings issued by the Commissioner of Taxation.

"**Guarantee**" means the guarantee and indemnity set out in Clause 15.

"**Guarantor**" means any person or persons named as such in the Rental Schedule and, if there is more than one, means each of them separately and every two or more of them jointly. Where such a person is named in the Rental Schedule as a trustee, "Guarantor" means the trustee of the trust named in the Rental Schedule.

"**ORIX**" means ORIX Australia Corporation Limited (ABN 79 002 992 681), its successors and assigns.

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) and includes any regulations connected or issued in conjunction with that Act and any amendments or replacements thereto, from time to time

"**Payment Dates**" means the dates shown as such in the Rental Schedule.

"**Relevant Person**" means a reference to each Customer and each Guarantor, severally.

"**Rental Location**" means the ORIX Branch shown as such in the Rental Schedule.

"**Rentals**" means the amounts shown in the Rental Schedule as being payable to ORIX for supply of the Equipment under the Rental Agreement.

"**Scheduled Term**" means the period encompassed by the Date Out and the Date Due In shown in the Rental Schedule, which may be extended pursuant to Clause 9.2 of these Rental Conditions.

"**Security Interest**" has the meaning given to that term in the PPSA

"**Serial Number**" has the meaning given to that term in the PPSA.

"**State**" means a State or Territory within the Commonwealth of Australia.

"**Site**" means the place specified as such in the Rental Schedule, being the place where the Equipment is to be located during the Term or, if the Equipment is a motor vehicle, the address where it will be ordinarily garaged.

"**Taxes**" means taxes, duties, imposts, levies, rates, charges, fees, withholdings and deductions which are levied or imposed by any authority together with any related interest, penalties, fines and expenses. It includes stamp duty and GST but does not include income tax on the taxable income of ORIX.

"**Term**" means Scheduled Term.

2.2 Interpretation

In the Rental Agreement unless the context otherwise requires —

- (a) headings are for convenience only and shall not affect interpretation.
- (b) a reference to a person includes a firm, body corporate, unincorporated association or an authority (and vice versa) and includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns.
- (c) law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under law made by parliament and consolidations, amendments, re-enactments or replacements of any of them).
- (d) a reference to any document or agreement shall be deemed to include a reference to such document or agreement (as varied, amended, supplemented or novated) as well as any Rental Schedule or annexure to it.
- (e) reference to a Clause, Annexure or Rental Schedule is a reference to a Clause, Annexure or Rental Schedule in the Rental Agreement.
- (f) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day and an act done by a party on a non-Business Day or after 4.00pm on a Business Day shall be deemed to have been done at 9.00am on the next Business Day.
- (g) if a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (h) including and similar expressions are not words of limitation.
- (i) a reference to a month means a calendar month.
- (j) a reference to writing includes a facsimile transmission and any other means of producing words in a tangible and permanently visible form.
- (k) words denoting any gender includes all other genders and words denoting the singular include the plural and vice versa.
- (l) all payments are to be made in Australian dollars.

3. SUBCONTRACTING AND SUB-HIRING

3.1 ORIX may subcontract to any person the performance of any services that ORIX agrees to provide as part of the Rental Agreement.

3.2 The Customer must not subcontract the operation of the Equipment to any other person nor sub-hire the Equipment without the prior written consent of ORIX.

4. CUSTOMER'S OBLIGATIONS

The Customer must —

- (a) ensure that the Equipment is maintained at all times in Good Condition and that all basic operator safety checks are properly made, including regular cleaning and (where applicable) daily oil, water and coolant checks; daily battery charge and water level checks.
- (b) notify ORIX in writing within 24 hours, of any problem with the Equipment (or any part of it), including any defect or any loss of, damage to or accident involving the Equipment (or any part of it).
- (c) ensure that the Equipment is only serviced by ORIX or a service provider approved by ORIX and that all servicing is done in accordance with the maker's instructions.
- (d) ensure that the Equipment is only used for the purpose for which it was intended and that it is operated at all times by appropriately, authorised, trained, skilled and licensed people strictly in accordance with all standards and laws relating to the use of the Equipment as well as any standards and laws applicable to premises in which the Equipment is located. Without limiting the generality of this clause, the Customer must ensure that there is full compliance with any laws relating to Occupational Health and Safety.
- (e) not part with possession of the Equipment and must ensure that ORIX is notified immediately if the Equipment ceases to be based at the Site shown in the Rental Schedule. The Customer must not move the Equipment to a Site in another State or Territory for more than 45 days without obtaining the prior written consent of ORIX.
- (f) not alter or attach anything to the Equipment without ORIX's written consent and must not remove or tamper with any ownership identification on the Equipment. The Customer must also ensure that no plates or other marks inconsistent with ORIX's ownership are placed on the Equipment.
- (g) not represent to any person that the Customer has title in the Equipment and, whenever necessary, the Customer must protect ORIX's interests by making it clear to others that ORIX owns the Equipment. The Customer must also not attempt to sell the Equipment or grant a security interest in the Equipment to any person.
- (h) provide ORIX's employees and subcontractors with uninterrupted access to the Equipment at all reasonable times —
 - i. to inspect its condition;
 - ii. to check whether the terms of the Rental Agreement are being complied with;
 - iii. so ORIX can supply any services required under the Rental Agreement; and
 - iv. for any other lawful purpose;
- (i) obtain all necessary occupational, health and safety clearances to enable ORIX to enter the Site and/or the Customer's premises.
- (j) not allow the Equipment —
 - (i) to be used for or to be tested in preparation for any race, rally, trial, speed trial, test, contest, motor sport or driver training course; or
 - (ii) without the prior written consent of ORIX, to propel or tow any vehicle; unless specifically designed to do so; or
 - (iii) to convey any load which is incorrectly loaded or secured or in excess of that for which the Equipment was constructed; or
 - (iv) to carry a greater number of passengers than the number for which the Equipment was constructed or for carrying passengers for hire or reward; or
 - (v) to be used in an unsafe or unroadworthy condition or dangerous manner; or
 - (vi) to be used in contravention of any legislation or regulation controlling vehicular traffic or for any illegal purpose; or
 - (vii) to be used in connection with the motor trade for experiments, tests, trials, demonstration or breakdown purposes; or
 - (viii) to be used to transport dangerous goods as defined in the Australian Code for the Transportation of Dangerous Goods by Road or Rail unless specifically designed to do so; or
 - (ix) to be used for a purpose other than for which it was intended.
- (k) ensure that the Equipment is not driven, operated or used:
 - (i) by any person who is not currently licensed to drive, operate or use the Equipment under any relevant law;
 - (ii) by a person with a percentage of alcohol or drugs in their breath, blood or urine in excess of the percentage permitted by law;
 - (iii) by a person whose faculties are impaired by any drug or intoxicating liquor;
 - (iv) by a person who is convicted of driving, at the time of loss, under the influence of any drug or intoxicating liquid;
 - (v) by a person who refuses to provide or allow the taking of a sample of breath, blood or urine for testing or analysis as required by law.
- (l) ensure all reasonable steps are taken to safeguard and protect the Equipment.
- (m) if the Scheduled Term is for more than a month, notify ORIX on or about the 26th day of each month of the Odometer and Hubbo readings for the Equipment.

5. CUSTOMER'S WARRANTIES, ACKNOWLEDGEMENTS AND AUTHORISATIONS**5.1 Warranties**

The Customer warrants —

- (a) that all information supplied by the Customer in the course of negotiations relating to the Rental Agreement is true in all respects.
- (b) that prior to entering into the Rental Agreement the Customer examined the Equipment and satisfied itself as to its compliance with the description in the Rental Schedule and as to its condition and suitability for the purposes of the Customer.
- (c) that the person who executed the Rental Schedule is authorised by the Customer to do so.

5.2 Acknowledgements

The Customer acknowledges —

- (a) that to the full extent permitted by law, all express and implied terms, conditions and warranties other than the ones set out in this Rental Agreement are excluded.
- (b) that ORIX is not liable for any injury to any person or loss or damage to property arising from the possession, installation, operation, removal or use of the Equipment while it is in the custody of or under the control of the Customer.
- (c) that the Rental Agreement does not pass title of the Equipment to the Customer.
- (d) that ORIX has not made or given any representation, warranty or undertaking about the suitability or fitness of the Equipment for the Customer's purposes or about the deductibility of Rental Payments for the purposes of income tax.
- (e) that all replacement parts, additions or attachments form part of the Equipment and are the property of ORIX.
- (f) ORIX relies on the truth of the Customer's and Driver's representations in this Rental Agreement.
- (g) that ORIX has not in any way represented itself as an entity carrying on the business of insurance.

5.3 Authorisations

- (a) The Customer irrevocably authorises ORIX to use the Customer's name and to act on the Customer's behalf in exercising any rights or instituting, carrying on or enforcing any legal proceedings which ORIX thinks desirable to protect its rights in the Equipment.
- (b) The Customer authorises ORIX to obtain credit information about the Customer to the extent permitted by any Privacy Legislation for the purposes of assessing the Customer's ability to meet obligations under the Rental Agreement and to assist ORIX in the collection of any payment that is overdue.
- (c) The Customer authorises ORIX, when the Equipment has been returned, to deduct from the Deposit any moneys remaining due to ORIX in connection with the Rental Agreement.

6. PAYMENTS**6.1 Deposit**

The Customer must pay the Deposit to ORIX when the Rental Schedule is executed by or on behalf of the Customer. At its discretion, ORIX may require the Deposit to be paid by bank cheque, EFTPOS or in cash, failing which delivery of the Equipment may be delayed until the Customer's cheque for the Deposit has been cleared.

6.2 Rentals

The Rental Schedule shows how Rentals are to be calculated and when they are to be paid. The Customer must pay to ORIX to the credit of a bank account directed by ORIX or, if no direction is given, at its address shown in the Rental Schedule or any different address notified by ORIX —

- (i) on or before the Payment Dates, the Rentals and related Taxes; and
- (ii) at the same time as the Rentals (unless ORIX requests otherwise) any other moneys due to ORIX under the Rental Agreement and any related Taxes.

6.3 Direct Debit

At the request of ORIX, the Customer will sign all documents (including any direct debit authority form) and implement and maintain all procedures necessary to enable ORIX to debit directly from the Customer's bank account, when they become due, Rentals and other amounts due under this Rental Agreement.

6.4 No Deductions from Payments

The Customer may not withhold part or all of any payment under this Rental Agreement for any reason, including because —

- (i) the Equipment is damaged or does not operate or is not in the Customer's possession;
- (ii) the Customer claims to have a set-off, counterclaim or other rights against ORIX or any other person.

6.5 Overdue Payments

(a) The Customer must pay interest calculated on daily balances at the Default Interest Rate on any amount that is not paid for the period it is unpaid.

- (b) ORIX may, in its discretion, on the first day of each month —
- (i) charge interest on unpaid interest for any period; and
 - (ii) add it to the amount for which the Customer is already liable under this Rental Agreement
- whereupon, the Customer will be liable for interest under Clause 6.5(a) on the total amount.

(c) The Customer must pay all interest payable under Clauses 6.5(a) and 6.5(b) when ORIX asks for it or at times specified by ORIX.

(d) The Customer's obligations to pay an amount on the date it becomes due is not affected by Clauses 6.5(a) to 6.5(c).

(e) Interest under Clauses 6.5(a) and 6.5(b) shall be payable on any amount expended by ORIX in seeking to recover the Equipment or in restoring any damage to the Equipment that is not "Fair Wear and Tear" until the amount is reimbursed to or recovered by ORIX.

6.6 Additional Charges

If applicable when the Equipment is returned, the Customer will pay ORIX additional charges to cover (a) extra days beyond the Term (b) extra kilometres beyond those specified in the Rental Schedule (c) any extra Collision Damage Waiver Reduction Fee ("CDWRF") (d) Fridge Engine Hours (e) Damage Costs and (f) Delivery or Collection Charges reasonably incurred by ORIX. The Customer will also reimburse ORIX for the cost of filling the fuel tanks on the Equipment.

6.7 Early Return Fee

If Equipment for which the Scheduled Term is six (6) months or more is returned to ORIX before the Scheduled Term has expired, the Customer will pay ORIX an Early Return Fee ("ERF")

7. LIABILITY OF ORIX AND CUSTOMER**7.1 Entire Agreement**

The Rental Agreement sets out the entire agreement between the parties and the contractual liability of each party to the other and neither party has any liability to the other for consequential or indirect damages in relation to the Equipment or for any delay or other failure in supplying the Equipment or any services covered by the Rental Agreement. ORIX gives no express or implied warranty as to any matter whatsoever including without limitation the condition of the Equipment, its merchantable quality or fitness for any purpose.

7.2 Limit of ORIX's Liability

ORIX accepts liability for loss of or damage to the Equipment caused by its negligence or defective workmanship or that of its employees, agents or contractors. However, to the extent permitted by law, ORIX will not be responsible in tort, contract or otherwise, including for personal injury or death to any person, or any consequential loss, loss of markets and pure economic loss, suffered by the Customer whether or not the loss or damage occurs in the course of performance by ORIX of the Rental Agreement or other services which are in the contemplation of ORIX and/or the Customer or in events which are foreseeable by ORIX and/or the Customer. To the extent that liability has not been effectively excluded then ORIX limits its liability to: —

- (i) replacing or paying for the cost of replacing the Equipment with the same or equivalent Equipment; or
- (ii) repairing the Equipment or paying for its repair; or
- (iii) supplying the relevant services again,,
at the election of ORIX.

7.3 Customer's Liability

The Customer accepts —

- (a) all risk associated with the Equipment while it is in the Customer's possession or control including (without limitation) all obligations arising under any laws relating to Occupational Health and Safety;
- (b) liability for any loss of or damage in relation to the Equipment or any services arising out of —
 - (i) the Customer's or its Driver's breach of the Rental Agreement; or
 - (ii) any other cause, except to the extent that Clause 7.2 applies; and
 - (iii) liability for any Claim, except to the extent that Clause 7.2 applies.
- (c) liability for all loss or damage to the Equipment (including the loss of use of the Equipment), legal expenses (on an indemnity basis), assessment fees, towing and recovery, consequential third party damage, storage and ORIX service charges where —
 - (i) any term or condition of the Rental Agreement, or any special condition has been breached;
 - (ii) the Equipment is not under the Customer's or the Driver's control at the time of the loss;
 - (iii) the Customer or the Driver have left the Equipment unlocked or left keys in the Equipment;
 - (iv) the Equipment is damaged, or any third party property is damaged, by driving the Equipment under or into any object lower than the height of the Equipment;
 - (v) the Customer or the Driver using the Equipment in contravention of any legislation or regulation controlling vehicular traffic.
- (d) liability for all fines, penalties, costs and other expenses arising from any parking, traffic or toll infringement (or like offence) incurred while the Equipment is in the Customer's possession or control

8. INSURANCES, INDEMNITIES AND DAMAGE COVER

8.1 ORIX will maintain reasonable Public Liability and Workers' Compensation insurance for any liability ORIX has to third persons and its own workers.

8.2 With the consent of ORIX (which may not be unreasonably withheld) the Customer may insure the Equipment for its full insurable value against any loss or damage and all other appropriate risks including (where appropriate) cover against environmental damage. Such insurance must be arranged under a comprehensive policy with an insurer licensed or authorised by the Australian Prudential Regulatory Authority and before the Equipment is delivered the Customer must provide ORIX with satisfactory evidence of such insurance including confirmation that ORIX has been noted on the policy as the owner of the Equipment.

8.3 If the Customer does not arrange insurance pursuant to clause 8.2, ORIX will insure the Equipment against any loss or damage (including, where appropriate environmental damage) but with the proviso that such insurance will not extend to loss or damage caused by driving the Equipment under or into any object lower than the height of the Equipment.

8.4 **Consequent upon the proviso in Clause 8.3, the Customer is liable for and indemnifies ORIX against any loss or damage [as more particularly set out in clause 7.3(c)] caused by driving the Equipment under or into any object lower than the height of the Equipment. If there is such an event, the Customer must pay to ORIX on demand the full amount required to reimburse ORIX for all such loss or damage.**

8.5 Subject to Clauses 7.2 and 8.3, if any loss of or damage to any Equipment occurs the Customer must —

- (a) notify ORIX of the event within 24 hours of it occurring; and
- (b) for Equipment insured by the Customer, submit to ORIX within the next 48 hours a copy of the completed claim form submitted to the Customer's Insurer; and
- (c) for Equipment insured by ORIX, submit to ORIX within the next 48 hours a completed claim form and pay to ORIX on demand the Collision Damage/Loss Liability Charge specified in the Rental Schedule.

8.6 The Customer indemnifies ORIX, its employees, agents and subcontractors and the Owner of the Equipment (if other than ORIX) against any and all losses, damages, expenses and costs that any of them may sustain or incur as a result, whether directly or indirectly of any Claim.

8.7 The Customer agrees to indemnify ORIX, its employees, agents and subcontractors and the Owner of the Equipment (if other than ORIX) from and against any and all claims, demands, actions, liabilities, losses, costs and expenses (including, but not limited to legal costs on an indemnity basis) incurred by ORIX and the Owner as a consequence of the failure for whatever reason of the due and punctual performance of the Customer's obligations under this Agreement.

8.8 Provided the Customer and the Driver act within the terms and conditions of this Rental Agreement, ORIX's insurer may grant damage cover (which includes the Customer's legal costs incurred with the insurer's written consent) to the Customer and/or the Driver in respect of damage to the Equipment and/or damage to any third party property other than damage to any property owned by the Customer or Driver or held in trust or in the custody or control of the Customer.

8.9 This cover is also subject to:

- (i) the Customer paying any Collision Damage/Loss Liability Charge on the Rental Agreement;
- (ii) the Customer and its Driver not having breached any terms and conditions of this Rental Agreement;
- (iii) the Customer and/or the Driver not being covered under any policy of insurance;
- (iv) the Customer and the Driver providing such information and assistance as may be requested by ORIX or ORIX's insurer or anyone acting on behalf of ORIX or ORIX's insurer.

8.7 If cover is provided by ORIX's insurer, the insurer may bring, defend or settle any legal proceedings in its/their sole discretion and ORIX's insurer shall have the sole conduct of any proceedings. Any such proceedings shall be brought or defended in the Customer's name or the name of the Driver.

9. TERM OF THE RENTAL AGREEMENT

9.1 The Rental Agreement commences on the date it is signed by the parties and, unless terminated earlier or extended in accordance with Clause 9.2 hereof, continues to apply to each item of Equipment for at least the Scheduled Term specified in the Rental Schedule for the Equipment, being the interval between "Date Out" and "Date Due In".

9.2 ORIX and the Customer may at any time before expiry of the Term for any item of Equipment agree in writing to extend the Term for that Equipment.

- 9.3 In response to a telephoned request from an Authorised Officer of the Customer, ORIX may (at its entire discretion) extend the Term by sending a Notice to the Customer by facsimile. In that event, the rates shown in the relevant Rental Schedule for extra days and extra kilometres will be applicable.
- 10. HOW THE RENTAL AGREEMENT TERMINATES**
- 10.1 The Customer may terminate the Rental Agreement before the end of the Term for any Equipment by giving ORIX notice of such termination.
- 10.2 At any time ORIX may terminate the Rental Agreement with immediate effect by giving notice to the Customer if —
- (a) **(Breach of Essential Term):** the Customer breaches an Essential Term of the Agreement;
 - (b) **(Other Terms):** the Customer breaches or fails to comply with any obligation under the Agreement which is not an Essential Term and, if the breach is capable of remedy, fails to remedy that breach or non-compliance, to the reasonable satisfaction of ORIX within 14 days of notice from ORIX requiring it to comply with or remedy the same;
 - (c) **(Untrue Representation):** any representation, warranty or statement by or on behalf of the Customer or Guarantor is or proves to be untrue or misleading in any material respect;
 - (d) **(Change in Control):** the Customer or its ultimate holding company becomes controlled by another person or there is a substantial change in the management or control of the Customer, where for the purpose of this Clause a corporation is *controlled* by a person or entity holding a relevant interest as defined in the Corporations Act of more than 20% of voting shares in that corporation;
 - (e) **(Cessation of Business):** the Customer stops payment, ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent on reasonable terms approved by ORIX, such approval not to be unreasonably withheld;
 - (f) **(Material Adverse Change):** there are any other circumstances including an adverse changes to the business assets; or
 - (g) **(Event of Insolvency):** an Event of Insolvency occurs.
- 11. AFTER THE RENTAL AGREEMENT TERMINATES**
- 11.1 Immediately after termination of the Rental Agreement for any Equipment —
- (a) the Customer must pay ORIX all money the Customer owes ORIX in relation to that Equipment;
 - (b) the Customer must pay ORIX for each day until the Equipment is delivered to ORIX the amount payable for each day as stated in the Rental Schedule;
 - (c) the Customer must deliver the Equipment in Good Condition to ORIX at its address or such other place as ORIX may reasonably direct in writing; and
 - (d) if the Equipment is not in Good Condition when delivered to ORIX, the Customer must pay ORIX the cost of repairs required to restore the Equipment to Good Condition.
- 11.2 If the Equipment is not returned as and when required by Clause 11.1(c) —
- (a) ORIX or its representative may retake possession of the Equipment. For this purpose, the Customer authorises ORIX or its representative to enter and remain upon any premises or Site where the Equipment is or where ORIX suspects the Equipment is without liability for trespass or otherwise; and
 - (b) the Customer must reimburse ORIX on demand for all expenses and costs (on full indemnity basis) incurred by ORIX in repossessing the Equipment or incidental to that action.
- 12. ASSIGNMENT**
- 12.1 The Customer may not transfer any of its rights or obligations under the Rental Agreement without ORIX's prior consent in writing.
- 12.2 ORIX may, by giving notice to the Customer, transfer any of its rights and obligations under the Rental Agreement to any person.
- 12.3 The Customer acknowledges that ORIX may enter into the Rental Agreement as agent for another party.
- 13. STAMP DUTY, GST AND OTHER TAXES**
- 13.1 The Customer must pay or reimburse ORIX on demand for all stamp duty payable in relation to the Rental Agreement, and any document executed to give effect to the Rental Agreement, and any Taxes payable in connection with or pursuant to the Rental Agreement or the Equipment.
- 13.2 Notwithstanding any other provision in the Rental Agreement —
- (a) ORIX may, in addition to any amounts payable by the Customer under the Rental Agreement, require the Customer to pay any amount of GST which is payable or might be payable by ORIX in respect of the provision of any Equipment, services or other things to be done under the Rental Agreement; and
 - (b) If ORIX requires any amount to be paid by Customer under paragraph (a) the Customer must pay ORIX that amount on demand.
- 13.3 This Clause survives termination of the Rental Agreement.
- 14. PERSONAL PROPERTY SECURITIES ACT**
- 14.1 If ORIX determines that the Rental Agreement is or contains a Security Interest, the Customer agrees to promptly do anything (including amending the Rental Agreement, executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which ORIX may at any time require for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective; or
 - (b) ensuring that the Security Interest is:
 - (i) continuously perfected and/or;
 - (ii) perfected by control; and/or
 - (iii) perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any collateral the subject of the Security Interest, to the extent possible under the PPSA; or
 - (c) enabling ORIX to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by ORIX; or
 - (d) enabling ORIX to exercise any right or power in connection with the Security Interest.
- The Customer agrees that it will bear all costs and expenses that the Customer incurs in complying with this clause 14.1 and any costs and expenses incurred by ORIX for the purposes set out in clause 14.1
- 14.2 The Customer must not change or remove the Serial Number of any Equipment without the consent of ORIX
- 14.3 To the extent permitted by law, and in respect of any Security Interest created by the Rental Agreement:
- (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
 - (b) the Customer irrevocably and unconditionally waives its right to receive any verification statement in respect of a financing statement or financing change statement relating to any Security Interest; and
 - (c) the Customer irrevocably and unconditionally waives its right to receive any other notice required under the PPSA unless the provision of such notice can not be excluded; and
 - (d) the parties contract out of the application of subsection 116(2) of the PPSA of any provision of Part 4.3 of the PPSA in relation to the Equipment.
- 14.4 The parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if ORIX approves.
- 14.5 The Customer warrants that —
- (a) all information or documentation provided to ORIX under this clause 14 is accurate and complete, and
 - (b) except where it is specifically agreed to the contrary in a Special Condition set out in the Rental Schedule, the Customer does not and will not hold any Equipment as inventory (within the meaning given to that expression in the PPSA)
- 14.6 If any collateral that is subject to a Security Interest created by the Rental Agreement gives rise to any proceeds, the proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly from any dealing with the collateral or otherwise arising out of or relating to that collateral whether or not the dealing is permitted under the Security Interest, ORIX's Security Interest continues in the collateral and attaches to the proceeds.
- 15. GUARANTEE AND INDEMNITY**
- 15.1 This clause 15 will apply if a Guarantor is named in the Rental Schedule.
- 15.2 Since ORIX has entered into this Rental Agreement because the Guarantor asked it to, the Guarantor —
- (a) guarantees —
 - (i) the payment of all amounts owing by the Customer to ORIX under this Rental Agreement; and
 - (ii) the performance by the Customer of all its other obligations under this Rental Agreement; and
 - (b) indemnifies ORIX for any loss or damage it might suffer if, for any reason —
 - (i) the Customer does not pay ORIX any amounts which the Customer owes ORIX under this Rental Agreement; or
 - (ii) the Customer does not perform any of its other obligations under this Rental Agreement; or
 - (iii) ORIX cannot recover any amount from the Customer under the Rental Agreement or from the Guarantor under the guarantee in Clause 15.2(a).
- 15.3 The Guarantor acknowledges —
- (a) that ORIX has entered into this Rental Agreement relying on the fact that all information given to ORIX, directly or indirectly, by the Guarantor is accurate and not misleading. It will be a breach of this Rental Agreement if it is discovered that information given to ORIX was inaccurate or misleading;
 - (b) that ORIX has given no advice to the Guarantor about entering into the Guarantee and Indemnity contained in this Rental Agreement;
 - (c) that, before the Guarantor agreed to sign the Rental Schedule, the Guarantor made independent enquiries and obtained such advice (legal, accounting or financial) as the Guarantor considered appropriate;
 - (d) that, if so requested by ORIX, the Guarantor has had the full consequences of the Guarantee and Indemnity contained in this Rental Agreement explained to it by an independent lawyer before the Guarantor agreed to sign the Rental Schedule; and
 - (e) that it benefits by entering into the Guarantee and Indemnity contained in this Rental Agreement.
- 15.4 ORIX need not enforce any of its rights against the Customer before claiming from the Guarantor under the Guarantee and Indemnity contained in this Rental Agreement. Also, the Guarantor's liability under the Guarantee and Indemnity contained in this Rental Agreement continues until all amounts that the Customer owes ORIX have been paid and are not required to be returned because the Customer was or becomes insolvent.



- 15.5 The Guarantor is still liable even if —
- (a) ORIX gives the Customer extra time to pay; or
 - (b) ORIX tells the Customer that it does not have to pay; or
 - (c) ORIX is slow in taking action to enforce this Guarantee and Indemnity; or
 - (d) ORIX changes this Rental Agreement without the Guarantor's consent; or
 - (e) ORIX exercises any of its rights under Clause 12 of this Rental Agreement; or
 - (f) a person who was to sign the Guarantee and Indemnity contained in this Rental Agreement does not do so; or
 - (g) anything else happens which would otherwise have the effect of releasing the Guarantor from the Guarantee and Indemnity contained in this Rental Agreement.
- 15.6 Unless the Guarantor has indicated otherwise in the Rental Schedule, the Guarantor warrants that it does not enter into the Guarantee and Indemnity contained in this Rental Agreement as trustee of any trust or settlement. If the Guarantor is a trustee —
- (i) the Guarantor warrants —
 - (A) that it is the sole trustee of the trust; and
 - (B) that it has the necessary power to enter into the Guarantee and Indemnity contained in this Rental Agreement and enters into it with the consent and for the benefit of the beneficiaries of the trust; and
 - (C) that it has the right to seek recourse or indemnification from the trust's assets for the obligations incurred by it under the Guarantee and Indemnity contained in this Rental Agreement; and
 - (ii) the Guarantor agrees —
 - (A) that, without ORIX's consent, it will not retire or be removed as trustee, the trust will not be terminated and the trust deed will not be changed; and
 - (B) that, if ORIX requests, it will give ORIX copies of the trust deed and other documents relating to the trust; and
 - (C) that it personally indemnifies ORIX against any liability or loss arising from and any costs, charges and expenses reasonably incurred in connection with a breach by the Guarantor of this Clause 15.6.

16. GOVERNING LAW

The Rental Agreement will be construed in accordance with and governed by the laws of the State or Territory in which the Rental Location of ORIX as shown in the Rental Schedule is located and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State and Courts of Appeal from them.

17. CERTIFICATES

Unless there is manifest error, a certificate signed by an Authorised Officer of ORIX shall be prima facie evidence of the matters covered therein and binding on the Customer and Guarantor.

18. SET OFF

At its sole discretion ORIX may apply any money that the Customer or the Guarantor pays to it or which is standing to the Customer's or Guarantor's credit with ORIX, towards satisfaction of any amount that the Customer or the Guarantor owes ORIX now or in the future but, if it exercises this right, ORIX will promptly inform the Customer and the Guarantor.

19. NOTICES AND OTHER COMMUNICATIONS

19.1 Notices, certificates, consents and other communications ("**Notices**") in connection with this Rental Agreement must be in writing.

19.2 They must be —

- (a) left at the address last notified; or
- (b) sent by prepaid post to the address last notified; or
- (c) sent by facsimile to the facsimile number last notified.

19.3 If they are sent by post, they are taken to be received on the third day after posting.

19.4 If they are sent by facsimile, they are taken to be received on production of a transmission report by the transmitting machine, which indicates that the whole facsimile was sent.

19.5 They take effect from the time they are received unless another time is specified in them.

19.6 The Customer and Guarantor each agrees to notify ORIX promptly in writing if it changes its residential address, postal address or facsimile number.