

Rex J Andrews Pty Ltd - Terms & Conditions of Hire

<p>1. Definitions</p> <p>1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.2 "RAJ" means Rex J Andrews Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Rex J Andrews Pty Ltd.</p> <p>1.3 "Client" means the person's, entities or any person acting on behalf of and with the authority of the Client requesting RAJ to provide the 8.1 services as specified in any proposal, quotation, order, invoice or other documentation; and</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Equipment" means all Equipment (including any accessories) supplied on hire by RAJ to the Client (and where the context so 8.4 permits shall include any incidental supply of services). The Equipment shall be as described in the invoice, quotation or authority to hire, or any other work authorisation forms as provided by RAJ to the Client.</p> <p>1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoice, quotation, authority to hire, or any other forms as provided by RAJ to the Client.</p> <p>1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational 9.1 information, know-how, trade secrets, confidential information, 9.1 affairs, contracts, client information (including but not limited to "Personal Information" such as: name, address, D.O.B. 9.2 occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit 9.3 applications, credit history) and pricing details.</p> <p>1.7 "Cookies" means small files which are stored on a user's computer. 9.3 They are designed to hold a modest amount of data (including Personal Information) about a user and to enhance the navigation and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to disable the Cookies first by selecting the option to enable / disable provided on the 9.4 website, prior to ordering Equipment via the website.</p> <p>1.8 "Price" means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between RAJ and the Client subject to clause 9 of this Contract.</p> <p>1.9 "GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and it is immediately 10.1 bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Delivery of, the Equipment.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Client acknowledges that the hire of Equipment on credit shall not take effect until the Client has completed a credit application with RAJ and it has been approved with a credit limit established for 10.3 the account.</p> <p>2.5 In the event that the hire of Equipment request exceeds the Clients credit limit and/or the account exceeds the payment terms, RAJ 11.1 reserves the right to refuse Delivery.</p> <p>3. Electronic Transactions Act</p> <p>3.1 Electronic signatures deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW & SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, section 14 of the Electronic Transactions Act 2011 (WA), section 14 of the Electronic Transactions (Queensland) Act 2001, section 7 of the Electronic Transactions Act 2000 (TAS), (wherever is applicable), or any other applicable provisions of that Act or any Regulation made under that Act.</p> <p>4. Errors and Omissions</p> <p>4.1 The Client acknowledges and accepts that RAJ shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by RAJ in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RAJ in respect of the Equipment hire and/or services.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of RAJ, the Client shall not be entitled to treat this Contract as rescinded nor render it invalid.</p> <p>5. Change in Control</p> <p>5.1 The Client shall give RAJ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any change in the Client's name, (including but not limited to, changes in the Client's name, address, contact person or fax number, change of trustees, or business practice). The Client shall be liable for any loss incurred by RAJ as a result of the Client's failure to comply with this clause.</p> <p>5.2 Payment of RAJ's invoice shall be either:</p> <p>(a) as indicated on invoices provided by RAJ to the Client in respect of Equipment supplied on hire; or</p> <p>(b) as recited in clause 6.2 which shall be binding upon RAJ provided that the Client shall accept in writing RAJ's quotation within thirty (30) days.</p> <p>6.2 RAJ reserves the right to change the Price in the event of a variation to RAJ's quotation. Variations will be charged for on the basis of RAJ's quotation, and will be determined in writing and shown as variations on RAJ's invoice. The Client shall be required to respond to any variation submitted by RAJ within ten (10) working days. Failure to do so will entitle RAJ to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>6.3 At RAJ's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be returned to the Client by within thirty (30) days of the return of the Equipment, provided the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 14.2, and any outstanding balance thereof shall be due as per clause 6.2.</p> <p>6.4 Time for payment for all variations must be made in full at the time of their completion.</p> <p>6.5 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and RAJ.</p> <p>6.6 RAJ may in its discretion allocate any payment received from the Client towards any invoice that RAJ determines and may do so at the time of receipt or at any time afterwards. On any default by the Client RAJ may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RAJ, payment will be applied to RAJ's invoices in the order that preserves the maximum value of RAJ's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.</p> <p>6.7 The Client shall not be entitled to set off against, or deduct from the Price, any sum owed or claimed to be owed to the Client by RAJ not to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RAJ an amount equal to any GST RAJ may be liable for any supply by RAJ under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6.9 Receipt by RAJ of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured or cleared or recognised.</p> <p>7. Hire Period</p> <p>7.1 Hire charges shall commence from the time the Equipment departs from RAJ's premises and will continue until the return of the Equipment to RAJ's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>7.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.</p> <p>7.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless RAJ confirms special</p>	<p>arrangements in writing. In the event of Equipment breakdown provided the Client notifies RAJ immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.</p> <p>7.3.8 If any damage or loss will be issued when the Equipment has been either collected by RAJ, or returned to RAJ's premises.</p> <p>Delivery</p> <p>Delivery ("Delivery") of the Equipment is taken to occur at the time that the Client or the Client's nominated carrier takes possession of the Equipment at RAJ's premises; or</p> <p>(b) RAJ (or RAJ's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>At RAJ's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.</p> <p>RAJ may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.</p> <p>Any time specified by RAJ for Delivery of the Equipment is an estimate only and RAJ will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that RAJ is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, RAJ shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.</p> <p>Risk</p> <p>RAJ retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.</p> <p>The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies RAJ for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing, whether or not by fire, theft, or damage attributable to any negligence, failure, or omission of the Client.</p> <p>The Client will insure, or self-insure, RAJ's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, theft or fire, and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would be likely to cause all or part of the Equipment to be damaged or destroyed.</p> <p>The Client accepts full responsibility for and shall keep RAJ indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment, whether or not by fire, theft, or damage attributable to any negligence, failure or omission of the Client or any other persons.</p> <p>Title</p> <p>The Equipment is and will at all times remain the absolute property of RAJ, and the Client must return the Equipment to RAJ upon request to do so.</p> <p>If the Client fails to return the Equipment to RAJ as is required under this Contract or when requested to do so, then RAJ or RAJ's agent may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by RAJ as a result of RAJ so repossessing the Equipment shall be charged to the Client.</p> <p>The Client is not authorised to pledge RAJ's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p> <p>Personal Property Securities Act 2009 ("PPSA")</p> <p>In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to those terms in the PPSA.</p> <p>Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all equipment that has previously been supplied to the Client and will be supplied in the future by RAJ to the Client.</p> <p>The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) that RAJ may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA;</p> <p>(iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, RAJ for all expenses incurred by RAJ in relation to a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged 15.1 thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of RAJ;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of any party without the prior written consent of RAJ.</p> <p>RAJ and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these 15.2 terms and conditions.</p> <p>11.5 The Client waives their rights to receive notices under sections 95, 115 (2)(a), 133 and 134 of the PPSA.</p> <p>11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>11.7 Unless otherwise agreed to in writing by RAJ, the Client waives their right to a verification statement in accordance with section 157 of the PPSA.</p> <p>11.8 The Client must unconditionally ratify any actions taken by RAJ under clauses 11.3 to 11.5.</p> <p>11.9 Subject to any express provisions to the contrary (including those contained in clause 11.2), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>11.10 Only to the extent that the hire of the Equipment exceeds a two (2) year period, RAJ agrees to indemnify the Client in respect of a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.</p> <p>Security and Warranties</p> <p>12.1 In consideration of RAJ agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>12.2 The Client indemnifies RAJ from and against all RAJ's costs and disbursements including legal costs on a solicitor and own client basis, in respect of RAJ's rights under this clause.</p> <p>12.3 The Client irrevocably appoints RAJ and each director of RAJ as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.</p> <p>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>13.1 The Client must inspect the Equipment on Delivery and must within seven (7) days of Delivery notify RAJ in writing of any evident defect or damage. The Client shall be deemed to have accepted the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow RAJ to inspect the Equipment.</p> <p>13.2 Under applicable State, Territory and Commonwealth law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>13.3 RAJ acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, RAJ does not warrant or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. RAJ's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>13.5 If the Client a consumer within the meaning of the CCA, RAJ's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>If RAJ is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then RAJ may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and/or accessories which have been provided to the Client which were not defective.</p> <p>17.2 If the Client is not a consumer within the meaning of the CCA, RAJ's liability for any defect or damage in the services or Equipment is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by RAJ, at RAJ's sole discretion;</p>	<p>(b) limited to any warranty to which RAJ is entitled, if RAJ did not manufacture the Equipment;</p> <p>(c) otherwise negated absolutely.</p> <p>Notwithstanding clauses 13.1 to 13.3, but subject to the CCA, RAJ shall not be liable for any defect or damage which may be caused or partly caused by the result of:</p> <p>(a) the Client failing to properly maintain or store any Equipment;</p> <p>(b) the Client interfering with the Equipment in any way without RAJ's written approval to do so;</p> <p>(c) the Client using the equipment for any purpose other than that for which it was designed;</p> <p>(d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(e) the Client failing to follow any instructions or guidelines provided by RAJ;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>Client's Responsibilities</p> <p>14.1 The Client shall:</p> <p>(a) satisfy itself at commencement that the Equipment is suitable for its purposes;</p> <p>(b) ensure that all persons operating the Equipment have completed the appropriate training provided by RAJ representative;</p> <p>(c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by RAJ or posted elsewhere;</p> <p>(d) comply with all work health and safety laws relating to the Equipment and its operation;</p> <p>(e) ensure that the operator of any Equipment is not under the influence of any alcohol or drug that may impair their ability to operate the Equipment;</p> <p>(f) ensure that all reasonable care is taken by the operator in handling and/or parking the Equipment and that the Equipment is not left unsecured in stores when not in use;</p> <p>(g) not use any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of RAJ;</p> <p>(h) not exceed the recommended or legal load and capacity limits of the Equipment;</p> <p>(i) maintain the Equipment as is required by RAJ (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);</p> <p>(j) notify RAJ by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;</p> <p>(k) upon termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to RAJ (or RAJ's designated employee);</p> <p>(l) keep the Equipment in their own possession and control and shall not assign the benefit of this Contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;</p> <p>(m) not alter or make any additions to the Equipment including but not limited to alteration, making any additions, to detaching or erasing any identifying mark, plate or number, on, or in, the Equipment or in any other manner interfere with the Equipment;</p> <p>(n) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other use;</p> <p>14.2 Immediately on receipt by RAJ the Client will pay:</p> <p>(a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to RAJ;</p> <p>(b) all costs incurred in replacing the Equipment;</p> <p>(c) all costs of repairing any damage caused by:</p> <p>(i) the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(ii) RAJ's negligent actions of the Client or the Client's employees;</p> <p>(iii) vandalism, or (in RAJ's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;</p> <p>(d) the cost of any consumables provided by RAJ and used by the Client;</p> <p>(e) any costs incurred by RAJ in picking up and returning the Equipment to RAJ's premises if the Client does not return the Equipment to RAJ's premises after the pre-agreed pickup location when it was originally agreed that the Client would do so;</p> <p>(f) any lost hire fees RAJ would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;</p> <p>(g) any RAJ's reasonable expenses in relation to a claim made by either the Client or RAJ in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or otherwise.</p> <p>Cancellation</p> <p>Without prejudice to any other remedies RAJ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under this Contract, RAJ may repossess the Equipment as per clause 10.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. RAJ will not be liable to the Client for any loss or damage. Client suffers because RAJ has exercised its rights under this clause.</p> <p>16.2 RAJ may cancel these terms and conditions or cancel Delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice RAJ shall repay to the Client any amount paid in respect of the Price. RAJ shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels Delivery of the Equipment the Client shall be liable for the cost of cancellation (including, but not limited to, any loss of profits).</p> <p>Default and Consequences of Default</p> <p>16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due to the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at RAJ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>16.2 If the Client owes any money the Client shall indemnify RAJ from and against all costs and disbursements incurred by RAJ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RAJ's default fees and legal disbursements).</p> <p>16.3 In addition to any rights or remedies RAJ may have under this Contract, if the Client has made payment to RAJ, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs and disbursements incurred by RAJ in recovering that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.</p> <p>Without prejudice to RAJ's other remedies at law RAJ shall be entitled to cancel or suspend the supply of the Client which remains unperformed and all amounts owing to RAJ shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to RAJ becomes overdue, or in RAJ's opinion the Client will be unable to meet its payments as they fall due; or</p> <p>(b) the Client has exceeded any applicable credit limit provided by RAJ;</p> <p>(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>Privacy Policy</p> <p>20.4 All electronic documents, images or other recorded information held or used by RAJ for Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. RAJ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (Cth) and the Part III of the Privacy Act by Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation (GDPR) (collectively "EU Data Privacy Laws"). RAJ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by RAJ that may result in serious harm to the Client, RAJ will notify the Client in accordance with the requirements of the GDPR.</p> <p>20.8 Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.</p> <p>20.9 The Client's consent to the handling and use of Personal Information in respect of Cookies where transactions for purchases/orders/transpare directly from RAJ's website. RAJ agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's</p>	<p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to RAJ when RAJ sends an email to the Client, so RAJ may collect and review that information (collectively "Personal Information").</p> <p>In or around the course of processing of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via RAJ's website.</p> <p>17.3 The Client agrees for RAJ to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details, contact details, credit history) (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by RAJ.</p> <p>17.4 The Client agrees that RAJ may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>17.5 The Client consents to RAJ being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>17.6 The Client agrees that personal credit information provided may be used and retained by RAJ for the following purposes (and for other approved purposes of RAJ):</p> <p>(a) the provision of Equipment; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment;</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Equipment.</p> <p>17.7 RAJ may give information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client for the purpose of credit rating;</p> <p>17.8 The information given to the CRB may include:</p> <p>(a) Personal Information as outlined in 17.3 above;</p> <p>(b) name of the credit provider and that RAJ is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced; or alternatively that the Client no longer has any overdue accounts and RAJ has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of RAJ, the Client has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>17.9 The Client shall have the right to request (by e-mail) from RAJ:</p> <p>(a) a copy of the Personal Information about the Client retained by RAJ and the right to request that RAJ correct any incorrect Personal Information; and</p> <p>(b) that RAJ does not disclose any Personal Information about the Client for the purpose of credit rating or marketing.</p> <p>17.10 RAJ will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>17.11 In the event of a complaint by contacting RAJ via e-mail, RAJ will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event of a complaint by contacting RAJ via the resolution process, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>Other Applicable Legislation</p> <p>18.1 If there are any disputes or claims for unpaid goods and/or services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Security of Payments Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payments) Act 2008 (Australian Capital Territory) may apply.</p> <p>Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the laws listed in clause 18.1, such as applicable, except to the extent permitted by the Act where applicable.</p> <p>Trusts</p> <p>19.1 If the Client at any time upon or subsequent to entering into this Contract is acting in the capacity of trustee of any Trust ("Trust") then whether or not RAJ may have notice of the Trust, the Client covenants with RAJ as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client owns or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of any trustee of the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Client will not without consent in writing of RAJ (RAJ will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any addition to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the Trust property.</p> <p>General</p> <p>20.1 The Client agrees to enforce any provision of these terms and conditions which shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state and/or territory in which the Equipment was provided by RAJ to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Sydney Courts of New South Wales in which RAJ has its principal place of business.</p> <p>20.3 Subject to clause 13, RAJ shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RAJ of any provision of these terms and conditions. Alternatively RAJ's liability shall be limited to damages which under no circumstances shall exceed the Price.</p> <p>20.4 RAJ may licence and/or assign all or any part of its rights and obligations under this Contract without the Client's consent.</p> <p>20.5 The Client cannot assign or licence without the written approval of RAJ.</p> <p>20.6 RAJ may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract. The Client agrees that RAJ is not a subcontractor and understands that they have no authority to give any instruction to any of RAJ's sub-contractors without the authority of RAJ.</p> <p>20.7 The Client agrees that RAJ may amend their general terms and conditions for subsequent future contracts with the Client without disclosing such to the Client. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for RAJ to provide Equipment on hire to the Client.</p> <p>20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>20.9 Both parties warrant that they have the power to enter into this Contract and that they have the necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
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