

Selfco Leasing Commercial Hire Purchase Terms and Conditions CHP10/2015

These terms are used by Specialist Equipment Leasing Finance Company Pty Limited ABN 58 099 591 616 ("us") for Commercial Hire Purchase Agreements.

1. MEANING OF WORDS AND GENERAL INTERPRETATION

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

"Business Day" means a day on which banks are ordinarily open for business in New South Wales.

"CHP Agreement" means an agreement to hire Goods which consists of a CHP Schedule and these Terms and Conditions.

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

"Commencement Date" means the date set out in the CHP Schedule or, if none is set out, the date the Goods are purchased from the Supplier.

"Controlling Person" means, in relation to any person ("first person"), any other person or persons who, directly or indirectly and either alone or together with other persons, may control the first person, which includes the capacity to determine the outcome of decisions about the first person's financial and operating policies, but does not include the directors of a publicly listed company.

"Default Event" means any of the events described in clause 13.

"Default Rate" means the rate set out in the CHP Schedule or, if none is set out, then 2% more than the Implicit Rate.

"Excluded Loss" means any loss or damage suffered by You which is indirect; or which results from some special circumstance or supervening event; or which is by way of loss of revenue, loss of profits, loss of production, loss of goodwill or credit, loss of business reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, or increased or wasted overhead costs; or which relates to expenses caused by the breach or rendered futile by the breach; or which is not a natural and immediate consequence of the breach; or which is suffered by You as a result of a claim upon You by a third party; or which consists of a claim for personal injury or damage to property.

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

"Hiring" means the hiring of the Goods created in accordance with the CHP Agreement.

"Implicit Rate" means the interest rate used by us in calculating the Rent Instalments.

"Insurance" means any insurance cover required to be entered into by You under clause 11.1.

"Selfco Website" means the website as notified by us from time to time.

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

"Net Rent Instalment" means a Rent Instalment which has been reduced by the amount of any Service Fee included in it.

"PPS Law" means:

- the Personal Property Securities Act 2009 (Cth) ("PPS Act") and the regulations made under that Act as amended from time to time; and
- any amendment made to any other legislation as a consequence of the PPS Act, including, without limitation, amendments to the Corporations Act.

"Proceeds" has the meaning given to that term under the PPS Act.

"Rebate Rate" means 5% less than the Implicit Rate.

"Recoverable Amount" is the total of the following:

- the sum of each Net Rent Instalment and any other money then due and owing to us but not paid; plus
- the sum of the Net Rent Instalments owing but not yet due (after deduction of any GST) as discounted by applying to each Net Rent Instalment the Rebate Rate (in each case the Rebate Rate applies to each Net Rent Instalment from the date the Recoverable Amount is payable to the date the Net Rent Instalment would have been due); plus
- all amounts payable under clauses 5.8 and 5.10.

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

"Rent Instalments" means the "Rent Instalments" specified in the CHP Schedule including the Final Rent Instalment.

"Security Interest" means:

- a security interest under the PPS Act;
- any other mortgage, pledge, lien or charge; and
- any other interest or arrangement of any kind that in substance secures the payment of money or performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

"Service Fee" means any fee or other amount that is payable by You under a Supply Agreement, as notified to us by the supplier under that Supply Agreement, but does not include, for the avoidance of doubt, any amount that we pay to a supplier that is referred to in clause 6.5.

"Supply Agreement" has the meaning given in clause 6.4.

"Supplier" means the supplier or suppliers from whom we purchased the Goods at Your request.

"Termination Value" means, for any of the Goods under a CHP Agreement, on any day the sum of: (a) the present values on that day of the gross instalments (other than related stamp duty and GST), which are still to fall due, and which are attributable to those Goods; and (b) the present value on that day of any balloon payments (including the amount of the Final Rent Instalment) of those Goods. The present value of an amount on a day is calculated by discounting that amount at the Rebate Rate.

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

HIRING TERMS & CONDITIONS

- 1.2. In the interpretation of the CHP Agreement:

- the singular includes the plural and vice versa, any gender includes the other genders and a person includes an individual, a body corporate or a government body;
- any warranty, obligation or right which binds or benefits two (2) or more persons under the CHP Agreement binds or benefits those persons jointly and severally; and
- "includes" means includes but without limitation.

2. AGREEMENT

- You may offer to hire Goods from us by giving us a signed CHP Schedule. You may only withdraw or vary this offer with our consent. If we accept an offer made by You in a CHP Schedule, then we will have entered into a CHP Agreement with You.
- Our acceptance of Your offer will occur on the earlier of:
 - the date that we notify You that we also have signed the CHP Schedule; and
 - the date that we agree with the Supplier to acquire the Goods for the purposes of the CHP Agreement.

- 2.3. Clause 2.2 is the only way in which we will accept Your offer. Neither the payment by You of any money on account of rent (even if we accept it), nor any representations made by the Supplier, nor any agreement which we make with the Supplier can be relied upon to establish the Agreement.
- 2.4. Our acceptance of Your offer may be subject to a guarantee being given by someone nominated by us and in the form of the annexed Guarantee Schedule, if any.
- 2.5. If You have executed the CHP Agreement as trustee of a trust, whether or not that fact is disclosed to us, the agreement is binding on You personally and in Your capacity as trustee.
- 2.6. This CHP Agreement supersedes any existing agreement relating to hire agreements between You and us. To the extent there is any inconsistency, the terms of this agreement will prevail.
- 3. TERM OF CHP AGREEMENT**
- 3.1. The Hiring under a CHP Agreement will begin on the Commencement Date (unless an earlier date is agreed under clause 5.3).
- 3.2. Unless terminated earlier under clause 14, the Hiring under a CHP Agreement will end at the expiry of the term specified in the CHP Schedule.
- 3.3. If You wish to vary the CHP Agreement, whether in relation to the Minimum Term or the Goods, we will consider Your request, but whether we allow the variation will be entirely at our discretion.
- 4. DELIVERY OF THE GOODS AND RISK IN THEM**
- 4.1. You are responsible for obtaining delivery of the Goods.
- 4.2. Before You obtain delivery of the Goods, You must satisfy Yourself as to their identity, condition, merchantable quality and fitness for Your purpose.
- 4.3. You acknowledge and represent that you have not had any Goods in your possession or in the possession of another person at your request for a period longer than 14 days prior to the date we pay for the Goods under this agreement, or if the Goods constitute Inventory, as defined under the PPS Act, then not prior to the date that we pay for the Goods under this agreement.
- 4.4. If You obtain possession of the Goods before the commencement of the Hiring, You will do so at Your own risk and not as our agent.
- 4.5. You will not, without our prior written consent, permit any Goods to become a fixture or an accession to anything that is not also subject to a Security Interest in our favour and, in those circumstances, only if the priority on that Security Interest is no less favourable than the priority of our Security Interest in the Goods that are to become a fixture or an accession.
- 5. PAYMENT OF RENT AND OTHER MONEY**
- 5.1. You must pay all of the Rent Instalments to us on or before the dates set out in the CHP Schedule for the term of the Hiring, as determined in accordance with clause 3.
- 5.2. You must pay on demand our standard fees and charges (such as late payment fees and bank fees we incur from time to time), as appear on the Selfco Website from time to time.
- 5.3. If we agree that the Hiring may begin before the Commencement Date, You must pay rent from the day on which the Hiring begins until the Commencement Date, with each day calculated as 1 day's proportion of a Rent Instalment (and, if Rent Instalments are payable quarterly, it will be assumed that each quarterly period has 91.25 days).
- 5.4. The Rent Instalments and all other amounts payable under the CHP Agreement must be paid by direct debit in accordance with our repayment procedures (as notified to You in writing from time to time) or in such other manner as we may direct You in writing from time to time in funds that are immediately available to us.
- 5.5. A payment which You make is not considered made until we have actually received the money.
- 5.6. You must pay interest to us on any money payable under the CHP Agreement which may from time to time be overdue and also on any damages which You may be liable to pay to us at the Default Rate.
- 5.7. You must pay to us all costs and expenses, including legal costs, which we incur in exercising any of our rights under the CHP Agreement, including any amounts which we pay to release any lien claimed by anyone over the Goods or to remedy any breach of Your obligations under the CHP Agreement.
- 5.8. You must pay, or reimburse us for, all duties, taxes and other government charges which are payable by us or You and which in any way relate to the Goods, their use, possession or operation, the CHP Agreement or the Hiring and we may, by notice to You, vary the Rent Instalments due to any variation in any such government charges.
- 5.9. In the following subclauses, GST, Input Tax Credit, Input Taxed and Taxable Supply have the same meanings as under A New Tax System (Goods and Services) Act 1999.
- 5.10. Subject to clause 5.11, if we are or become liable to pay GST in relation to any Taxable Supply made to You under or in connection with the CHP Agreement, in addition to any other amounts payable or consideration provided by You under this CHP Agreement, You must, at the same time, pay to us an amount equal to the amount of GST we have to pay. However, we must reduce this amount by the amount of any Input Tax Credit which we notify to You that we are entitled to claim in respect of the payment, cost, expense or liability.
- 5.11. Clause 5.10 does not apply to the Rent Instalments to the extent that they are expressed to be inclusive of GST.
- 5.12. A certificate issued by us as to an amount of money owing under the CHP Agreement is prima facie evidence of that fact.
- 5.13. Your obligation to pay the Rent Instalments is absolute and unconditional and (without limitation) will continue even if the Goods break down, are defective, damaged, lost, stolen or destroyed and you agree not to exercise or seek to exercise any right or claim to withhold payment or claim any deduction or set-off.
- 5.14. If You are required by the CHP Schedule to pay a deposit, it is a payment in consideration of our entry into the CHP Agreement and is not refundable.
- 5.15. We may, without notifying You or any guarantor:
- debit to any account held by You or the guarantor with us any amount payable by you or the guarantor, as the case may be, under this CHP Agreement; and
 - set off any amount payable by us to You or the guarantor against any amount payable by You or the guarantor, as the case may be, under this CHP Agreement; and
 - set off any amount payable by us to You or the guarantor against any amount payable by You, the guarantor or any of your related bodies corporate to us on any account whatsoever.
- 6. YOUR WARRANTIES AND ACKNOWLEDGMENTS**
- 6.1. You warrant to us that:
- all information which You have given to us is correct and not misleading;
 - in entering into the CHP Agreement You have not relied upon any conduct of or statement made by us or anyone acting on our behalf concerning the effect on You of entry into the CHP Agreement, Your financial affairs or taxation position, the quality of the Goods or their suitability for any purpose or the classification of this transaction under Australian Accounting Standards; and
 - You are authorised to enter into the CHP Agreement and in doing so You are not in breach of any authorisations or regulations affecting or controlling You or Your business.
- 6.2. The CHP Agreement sets out the whole agreement between us in respect of the Goods. We are not responsible for any usage, performance or service issues, warranties or other benefits which are or which You may require in connection with the Goods or any related services. Any claim which You may have in connection with the Goods, any services or any software to be used with the Goods, whether against the Supplier or any other person, will not affect Your obligations under the CHP Agreement (including without limitation the payment of Rent Instalments under Clause 5).
- 6.3. We are not liable to You if there is any variation in the Goods, our bailment of them to You or Your use of them which arises out of anything done by You, the Supplier or any other supplier of any thing to You (including, in relation to software, the copyright owner or the licensor), including any termination of the right to use any software or other thing in connection with or forming part of the Goods.
- 6.4. If You have entered (or will enter) into an agreement with a supplier ("Supply Agreement") for the provision of maintenance, support or other services ("Services") in connection with the Goods and You have agreed that any fees and other amounts ("Service Fees") payable by You for the provision of the Services will be included in the calculation of the Rent Instalments (and we have agreed for this to happen), then:
- we will collect the Service Fees from You on behalf of the supplier, but we otherwise have no obligations in relation to any Supply Agreement; and
 - the balance of the Rent Instalments which we may recover from You as part of the Recoverable Amount under clause 14 will not include any Service Fees.
- However, if the Supply Agreement is terminated for any reason and we have been notified of it, then the Rent Instalments payable by You under the CHP Agreement on and from the date of termination of the Supply Agreement will be the Net Rent Instalments.
- 6.5. If we have been requested to include in the amount that we will pay (or have paid) for the purchase of the Goods an amount for warranties, maintenance or other support services to be provided to You by a supplier in connection with the Goods or an amount for licence fees or other amounts payable in respect of software which is to be used with the Goods, then:
- the amount we pay for any of these things will be included in the calculation of the Rent Instalments;
 - Your rights to receive or have the benefit of the warranties, services or software are separate from the CHP Agreement and found only in Your arrangements with the supplier of warranties, services or software;
 - the amount which we may recover from You as part of the Recoverable Amount under clause 14 will include the amount so paid by us (less any amount that You have already paid to us as part of a Rent Instalment), irrespective of whether a warranty, maintenance or other support service or any software provided to You is defective or unsuitable or You no longer receive or have the benefit of it after the termination of the Hiring; and
 - we are not responsible in any way for, and exclude all liability in respect of, any issue relating to such warranties, services or software. You must seek any redress in relation to these issues from the supplier of them.
- 6.6. If, for any reason, there is an early termination of the term of the Hiring, then any amount paid by us (including any amount paid by us to a supplier at Your request under clause 6.5) which may be recovered from a supplier in respect of any maintenance or support services or software, because You no longer receive the services or use the software, is a matter for You to arrange with the relevant supplier and will not affect our entitlement to recover from You the balance of the Rent Instalments under clause 14. Of course, if any such supplier makes a refund to us of any licence, maintenance or support fees, we will set them off against any amount which You owe us under the CHP Agreement.
- 6.7. If You have executed the CHP Agreement as trustee of a trust ("Trust"), whether or not that fact is disclosed to us, You undertake that:
- You enter into the CHP Agreement for a proper purpose of the Trust;
 - You have power and authority under the terms of the Trust to enter into the CHP Agreement;
 - You have the right to be fully indemnified from the assets of the Trust, in priority to any beneficiaries of the Trust, for all liabilities which You may

- incur in connection with the CHP Agreement.
- 6.8. If we purchase the Goods from You, You represent that at the time we purchase the Goods we will receive good title to the Goods free of any encumbrance, Security Interest or any other interests.
 - 7. USE, MAINTENANCE, REPAIR AND WARRANTIES**
 - 7.1. You must at all times maintain the Goods in good working order and condition and in accordance with the manufacturer's specifications and recommendations. You must keep detailed maintenance records and produce them to us whenever we require it and also produce a copy of Your maintenance agreement for the Goods or such other evidence as we regard as satisfactory of their being maintained as required by this clause.
 - 7.2. You must only use the Goods for the purpose for which they were designed and in accordance with the manufacturer's instructions.
 - 7.3. You must only engage qualified personnel to undertake any repairs or other services to the Goods and not do anything which may cause any such person to believe that we will be responsible for paying that person's account.
 - 7.4. You must not make any alteration or addition to the Goods which may adversely affect their Market Value without our prior written consent.
 - 7.5. You must not remove the Goods from the Location set out in the CHP Schedule without our written consent.
 - 7.6. You must ensure that the Goods are only used by persons with proper qualifications and experience and must maintain all user logs or other records customarily maintained for such goods.
 - 7.7. You must keep the Goods secure from theft or damage and not do or allow anything to be done which is likely to jeopardise their safety, condition or value.
 - 7.8. You must maintain the Goods under Your personal control and not enter into any agreement with anyone in relation to the Goods (except as required to maintain or repair them) or do anything to prejudice our rights in the Goods.
 - 7.9. You must ensure that all warranties, service level agreements, maintenance and other performance requirements which You may wish to rely upon in relation to the Goods are arranged directly between You and the Supplier or other relevant person. We have no liability to You for any of these things.
 - 7.10. You are responsible for obtaining and maintaining at all times all licences or registrations required by law in connection with the Goods or their use.
 - 8. COMPUTER EQUIPMENT**
 - 8.1. The following subclauses apply where the Goods are computer or other information technology equipment (hardware) or software.
 - 8.2. You must ensure that all enhancements or upgrades to any software or firmware (such as the operating system or other operating software) required for the use of the Goods, as from time to time are generally made available by the manufacturer of the hardware to other users, are installed on the hardware.
 - 8.3. If any amount which we have paid when purchasing the Goods relates to software which forms part of or is supplied for use with the Goods, then we give You a right to possess the relevant copy of that software during the term of the CHP Agreement to the extent that we are entitled to do this (Your right to possess it may be affected by the licence terms set by the licensor of the software). You are responsible for ensuring that You are licensed to use that software and we do not provide You with any right to use the software and do not otherwise make it available to You.
 - 8.4. Upon termination of the Hiring and prior to our retaking possession of the hardware, You must remove from the hardware all data and application software. We will not be liable for any loss of data nor for any deletion of any data or software subsequently made by us. You indemnify us against any loss, damage, liability or expense arising from a claim made by any person and any damages or costs in relation to or arising from our possessing or selling the hardware when there is that person's or another person's data or software on it, or any deletion of any data or software subsequently made by us.
 - 9. OUR OWNERSHIP, RIGHTS AND CAPACITY**
 - 9.1. The Goods are our property. You are a bailee of the Goods only and have no right to purchase or acquire any interest in them, except as set out in Clause 15.
 - 9.2. You agree that we may have entered into the CHP Agreement for another person in any capacity we choose (including as agent for an undisclosed principal) and in such a case that person shall have the benefit of all rights, warranties, undertakings and indemnities of or in favour of us under the CHP Agreement and may, in any way, charge or deal with our interests under the CHP Agreement without notice to You. We may provide information about this CHP Agreement, You and any of Your related bodies corporate (as defined in the Corporations Act 1901) to any person with whom we have dealings in relation to the CHP Agreement.
 - 9.3. You must ensure that we have access to the Goods, at any time, in order to exercise any of our rights, including testing the Goods or otherwise checking whether You have complied with Your obligations. You authorise us to enter any premises where the Goods are located for these purposes (and will obtain such an authorisation, from any person having a proprietary or security interest in the land or premises on which the Goods are situated, on request by us). We will give You reasonable notice before doing so, unless we consider we must act quickly in order to protect our interest in the Goods.
 - 9.4. You acknowledge that this agreement creates a Security Interest in the Goods and is granted by you to secure the punctual payment of all amounts owing by You under the terms of this agreement and the performance of all your other obligations under this agreement. You agree that the Security Interest created by this agreement attaches or otherwise takes effect immediately upon You obtaining possession of the Goods. The Security Interest created by this agreement extends not only to the Goods but also to all and any Proceeds arising from any dealings with the Goods.
 - 9.5. Even though You have granted a Security Interest over the Goods to us, You may keep possession of the Goods subject to the Security Interest.
 - 9.6. You must ensure that any replacement part becomes our property and is subject to the Security Interest in our favour created by this agreement.
 - 9.7. You must not place, or allow to be placed, on the Goods any plates or marks that are inconsistent with our ownership or the Security Interest granted by You to us in accordance with the terms of this agreement. If we ask, You must affix to the Goods a readily visible plate or sign that brings the existence of our interest in the Goods to the attention of other persons and states that the disposal of the Goods or the granting of a Security Interest over the Goods which is not otherwise permitted under this agreement will breach this agreement, and not remove or change, or allow any person to remove or change, that plate or sign unless we first give our consent.
 - 9.8. You must not part with possession of the Goods without our consent. If You do part with possession of the Goods or deal in any way with the Goods in breach of this agreement, You acknowledge that we have not authorised such a dealing or agreed that such a dealing would extinguish the Security Interest created by this agreement and such Security Interest continues in the Goods despite the dealing. Despite anything referred to in this clause, we do not agree to subordinate any Security Interest we have in the Goods.
 - 10. SOME OF YOUR FURTHER OBLIGATIONS**
 - 10.1. You must notify us immediately of any change in Your address.
 - 10.2. You must produce the Goods for inspection whenever we request You to do so.
 - 10.3. You must notify us immediately following any loss or damage to the Goods.
 - 10.4. You must not assign the CHP Agreement or any of Your rights without our prior written consent.
 - 10.5. You must indemnify us against any claims or costs of any kind arising out of the use, operation or possession of the Goods (including any claims in relation to a breach of any other person's intellectual property rights, damage to any property or the death of or injury to any person) and for any action taken by us under or in relation to the PPS Act, including any registration, or any response to an amendment notice or demand or any request under the PPS Act.
 - 10.6. You indemnify us against, and must therefore pay us for, any liability, loss (including loss of profit), costs, charges or expenses (whether reasonable or not and including legal expenses on a full indemnity basis) arising from or incurred in connection with:
 - a) exercising or attempting to exercise any right or remedy under this agreement; and
 - b) a representation or warranty in clause 6.8 proving to be incorrect.
 - 10.7. During the term of the Hiring, You must provide us with copies of financial statements and other information that may reasonably be requested.
 - 11. INSURANCE**
 - 11.1. You must at all times during the Hiring (and during any time before or after then when the Goods are in Your possession) maintain public liability insurance for injury or damage caused by use of the Goods, property insurance against loss or damage to the Goods for all risks and for their Market Value (and we may notify You of what this amount should be) and any other insurance policies which we reasonably require.
 - 11.2. Both the insurer and the terms of the Insurance must be approved by us. You must note our interest on all Insurance policies as a co-insured and the holder of a Security Interest in the Goods and produce Insurance policy documents, certificates of currency or proof of payment whenever we request You to do so.
 - 11.3. In accordance with clause 11.1, You must not do or fail to do anything which would:
 - a) result in any Insurance claim being refused or not met in full;
 - b) vary any Insurance in any material respect without our consent; or
 - c) enforce, conduct, settle or compromise any Insurance claim without our consent.
 - 11.4. You must notify us of any circumstances, which may entitle a claim to be made under any Insurance.
 - 11.5. You must forward to us any proceeds or any payment of any entitlement sent to You under any Insurance for the Goods under the CHP Agreement, unless we agree otherwise. Any such amount may be applied by us towards the repair or replacement of the Goods or the reduction of Your liability to us, at our discretion.
 - 11.6. Any money we receive under any Insurance for loss or damage to the Goods which is not applied towards the repair or replacement of the Goods will be applied as follows:
 - a) first, in reimbursing any costs incurred by us in obtaining or attempting to obtain any of this money;
 - b) second, in reduction of any amount payable by You under clauses 14 or 15;
 - c) third, in refunding to You any amount You have paid to us under clauses 14 or 15; and
 - d) the balance, if any, is for us to keep.
 - 11.7. In the event of early termination of the Hiring under clause 14, You will be solely responsible for the termination of any Insurance and any refund of premium and any amount to be refunded will not affect Your liability to pay us the full amount of the Recoverable Amount.
 - 11.8. If you do not give us evidence of insurance acceptable to us covering our interest in the Goods you will be in breach of the terms of this agreement. In this case we may obtain insurance covering our interest in the Goods from an insurer of our choice. This insurance will not cover you against any risks. If we take out the insurance you will pay us an amount calculated by reference to our costs of taking out, acquiring and maintaining such insurance and our fees for our services in placing and maintaining such insurance (insurance charge). You will pay the insurance charge in instalments allocated, at our discretion, to some or all of the remaining instalment amounts and balloon payments, unless the total amount owing has become due for payment under clause 14.2 or 15.3 in which case any unpaid insurance charge is immediately payable by you. We will not be liable to you if we terminate any insurance coverage that

we arrange.

12. IMPLIED WARRANTIES AND LIMITATION OF LIABILITY

- 12.1. To the full extent permitted by law, we exclude all express or implied terms, conditions and warranties other than those set out in a CHP Agreement, and will not be liable for any loss or injury to any person, or any damage to, or loss or destruction of, property, arising from the possession, control, operation or use of the Goods.
- 12.2. Notwithstanding clause 12.1, nothing in a CHP Agreement is intended to exclude, restrict or modify any obligation we have that cannot be lawfully excluded.
- 12.3. To the full extent permitted by law, our liability in connection with a CHP Agreement or any Goods (including for breach of a condition or warranty implied or stipulated into a CHP Agreement by law) is limited (at its option) to either replacing the relevant Goods with the same or similar Goods, or paying the cost of replacing the relevant Goods; or repairing the relevant Goods or paying for its repair.
- 12.4. To the full extent permitted by any applicable State, Territory or Commonwealth law and subject to clause 12.3, our liability in damages in connection with a CHP Agreement shall not include liability for any Excluded Loss.
- 12.5. If the supplier or manufacturer of the Goods has given us warranties for those Goods then, to the full extent permitted by law, You can make any claim on the supplier or manufacturer that we could have made.
- 12.6. Subject to the provisions of clauses 12.1 and 12.4, and despite any implication arising from any other provisions of the CHP Agreement, we are not, and will not be, liable to You in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any direct, indirect or consequential loss or damage arising out of any breach or other act or omission in connection with the CHP Agreement, nor for any amounts payable under obligations of indemnity or restitution or other entitlements You may have to compensation.
- 12.7. Whether or not Division 1 of Part 3-2 of the Australian Consumer Law (as defined in the Competition and Consumer Act 1910 (Cth)) or any law to a similar effect applies our liability for anything in relation to the Goods, their use, or their installation, including damage or economic loss to anyone, is limited as much as it can be.

13. DEFAULT EVENTS

- 13.1. A Default Event occurs if:
- a) You fail to pay any one or more Rent Instalments in whole or in part and also fail to comply with any subsequent notice by us requiring payment to be made;
 - b) You fail to pay any one or more Rent Instalments in whole or in part and also fail to meet a subsequent undertaking (written or oral) given by You to us to remedy the default;
 - c) You default in complying with any of Your obligations under clause 11 (Insurance);
 - d) You purport to assign or in any way deal with the Goods or any of Your rights under the CHP Agreement;
 - e) the Goods are lost or destroyed or we form the opinion that they are so damaged as to make their repair uneconomical;
 - f) You default in complying with any obligation under the CHP Agreement (except where there is an event described in subclauses 13.1(a) to 13.1(e) above) and the default is not remedied within 14 days of us giving You notice of the default;
 - g) You are a corporation and action is taken by You or another person on the basis that You are insolvent or unable to pay Your debts when they are due, including any application for the appointment of a liquidator, receiver or administrator;
 - h) You are an individual and You die or become incapable of managing Your own affairs by reason of mental illness or other condition;
 - i) You are a partnership and the partnership is dissolved or an application is made to a court for dissolution of the partnership;
 - j) the holder of any security given at the time over any of Your assets becomes entitled to exercise any powers arising on default pursuant to that security or otherwise take action to enforce the security;
 - k) an event described in subclauses 13.1(g) to 13.1(j) occurs in relation to any guarantor of any of Your obligations under the CHP Agreement or the guarantor, if an individual, becomes or becomes liable to be declared bankrupt;
 - l) any warranty given or representation made by You in relation to the CHP Agreement is false;
 - m) we have, at our discretion, determined that there has been a change in the credit risk associated with the CHP Agreement from that which we assessed before the CHP Agreement was entered into (including a change of any Controlling Person whether of You or of any guarantor of any of Your obligations under the CHP Agreement) and no agreement is made with You as to a change to the terms of the CHP Agreement which is satisfactory to us.
- 13.2. However, where You have failed to pay part of one or more Rent Instalments, a Default Event will only occur for the purposes of clause 13.1(a) or 13.1(b) (or both) if You have failed to pay part of one or more Net Rent Instalments.

14. OUR RIGHTS UPON A DEFAULT EVENT

- 14.1. You will be deemed to have repudiated the CHP Agreement if a Default Event occurs. We will then be entitled to terminate the Hiring immediately by written notice to You or by taking possession or attempting to take possession of the Goods. We do not have to give You written notice of termination if we consider that the Goods or our rights upon termination may be adversely affected if we do not immediately take possession of the Goods.
- 14.2. Upon such termination of the Hiring, You are immediately liable to pay to us,

without need for any prior demand, and both by way of liquidated damages arising from the Default Event and from the early termination of the Hiring, the Recoverable Amount, together with any other amounts payable under the CHP Agreement.

- 14.3. However, if we terminate the Hiring under clause 13.1(e) (loss or destruction) the amount payable under clause 14.2 will be the Recoverable Amount.

15. OBLIGATIONS AT END OF HIRE

- 15.1. Whenever, on early termination of the Hiring:
- a) we repossess the Goods; or
 - b) the Goods are returned to our possession, we must dispose of the Goods as soon as reasonably practicable at the best wholesale or other price we can reasonably obtain at the time. The "net proceeds" of this disposal (ie the proceeds less any costs for repossessing, selling, attempting to sell, storing, repairing and maintaining the Goods) are ours to keep and You have no rights to them. However, we will give You credit for these proceeds up to, but not exceeding, the Recoverable Amount paid or payable by You under clause 14.2.
- 15.2. If we are unable to dispose of the Goods within 2 months of their return or repossession, we may obtain a valuation of the Goods and the Market Value so determined (less any costs for repossessing, valuing, attempting to sell, storing, repairing and maintaining the Goods) will be the "net proceeds" for the purposes of clause 15.2.
- 15.3. Our rights under clause 15.2 are without prejudice to our rights to recover from You any further losses, damages, costs or expenses we suffer or incur upon a later sale of the Goods.
- 15.4. At any time during the term specified in the CHP Schedule you may purchase all of the Goods in relation to a CHP Agreement by: (a) notifying us in writing that you want to purchase those Goods at least 30 days before the date you wish to purchase the goods; and (b) paying to us on the purchase date the sum of: (i) the Termination Values for those Goods as at the purchase date; (ii) any costs incurred or which we estimate we will incur in connection with terminating any arrangements for funding or hedging our exposure under the CHP Agreement as at the purchase date; and (iii) all amounts you owe under the relevant CHP Agreement as at the purchase date.
- 15.5. On the date specified as the Final Rent Instalment Date in the applicable CHP Schedule for the Goods, unless you have already exercised the option to purchase the Goods in accordance with clause 15.4, You must purchase the Goods by paying the Final Rent Instalment to us, together with all other money which You must pay to us under the CHP Agreement, and provided You are not in breach of any provision of the CHP Agreement, then ownership of the Goods will pass to You. If You do not comply with this clause 15.5 on time, You will be liable for all amounts You owe under this clause 15.5 and you must immediately: (a) return the Goods to us in good repair (fair wear and tear excepted) to a place we nominate; and (b) give us any certificates of registration relating to them and a signed transfer of those certificates in favour of us or a person we nominate.
- 15.6. If you comply with either clause 15.4 or 15.5 on time, the relevant CHP Agreement for those Goods will terminate on the purchase date or, where clause 15.5 applies, the Final Rent Instalment Date and on that date title to the relevant Goods will pay to You. Until then, You will only be a bailee of the Goods with no ownership rights to them. If the Goods include software, Your right to own a copy of the software (which does not include any interest in the copyright in the software) may still be subject to any licence or other agreement You have with the licensor or a distributor of the software.
- 15.7. You acknowledge that any Goods purchased by You under a CHP Agreement are purchased on an "as is, where is" basis and without any representation or warranty from us as to title, condition, or any other matter.
- 15.8. If the CHP Agreement is subject to the Hire Purchase Act 1859 (WA), upon our taking possession of the Goods, the amounts You must pay and our other rights under clauses 15 and 18 will be subject to the limitations and to the rights You are given under that Act and the CHP Agreement is subject to the limitations and to any order of a court made under that Act.
- 15.9. If the CHP Agreement is subject to section 121 of the Goods Act 1858 (Vic), on our taking possession of the Goods, You will be credited with so much of the proceeds of sale or value of the Vehicle as is provided for in that Act, even though clauses 15 or 18 might provide differently.

16. PERSONAL PROPERTY SECURITIES LEGISLATION

- 16.1. Application - This clause has effect despite any other provision of this Agreement.
- 16.2. A term defined in the PPS Law has the same meaning when used in this clause.
- 16.3. a) We are not obliged to give any notice or provide copies of any documents required under the PPS Law (including notice of a verification statement) unless the obligation to give that notice or provide that document cannot be excluded.
b) You consent to the waiver in sub-clause 16.3(a).
- 16.4. We may take all such steps as we consider advisable to register, protect, perfect, record, or better secure our position or any Security Interest in respect of this Agreement under the PPS Law.
- 16.5. We may by notice to You at any time, require You to do any or all of the following things:
- a) take all steps, provide information, produce documents and obtain consents;
 - b) execute any notice, consent, document or amendment to this CHP Agreement; or
 - c) do any other thing, that we consider necessary or desirable to:
 - A) ensure that this CHP Agreement or any Security Interest arising under this CHP Agreement is enforceable;

- B) register, protect, perfect, record or better secure our position in respect of this Agreement under PPS Law;
 - C) preserve our priority position as contemplated by this CHP Agreement; or
 - D) overcome any defect or adverse effect arising from the PPS Law.
- 16.6. You must:
- a) comply with the requirements of a notice under clause 16.5 within the time state in the notice at Your cost and expense;
 - b) reimburse our costs in connection with anything You are required to do under this clause; and
 - c) notify us immediately if Your name, address, identifying number or any other information provided by You for inclusion on a CHP Schedule which forms part of a CHP Agreement changes.
- 16.7. We need not comply with any provision of the PPS Act that the parties may contract out of in relation to the Equipment or this Security Interest. If a Default Event occurs and we give You notice to terminate the CHP Agreement under clause 14.1, we are not obliged to accept any amounts from, or accept the performance of an obligation by, You or any person, to remedy the Default Event. You agree that at any time after we give You such notice to terminate and we have begun to take steps to dispose, or re-take possession, of the Goods, we are not obliged to accept any amounts from, or accept the performance of an obligation, by You or any person, to reinstate the CHP Agreement.
- 16.8. Except as required by law, You agree that we are not obliged to comply with any requests from You or any person to provide copies of:
- a) the CHP Agreement,
 - b) any statements setting out the amounts due under, the payment terms of, or obligations secured by, the CHP Agreement,
 - c) a written approval or correction of an itemised list of personal property attached to the request indicating in which items of property the Security Interest is granted, or
 - d) a written approval or correction of the items set out in clause 16.8(b).
- 16.9. Without affecting Your obligations under this agreement, if, in our opinion a PPS Law applies, or will in the future apply to this agreement or any of the transactions provided for or contemplated by it and that PPS Law:
- a) adversely affects or would adversely affect our security position or our rights or obligations under or in connection with this agreement ("Adverse Affection"); or
 - b) enables or would enable our security position to be improved without adversely affecting You in a material respect ("Improvement"), we may by notice to You require You to do anything (including amending this agreement or executing any new document) that in our opinion is necessary or desirable to ensure that, to the maximum possible extent, our security position, and our rights and obligations, are not subject to an Adverse Affection or are improved by an Improvement. You must comply with the requirements of that notice within the time stipulated in the notice.
- 17. APPROPRIATION OF PAYMENTS**
- We may apply any money received from You, or from anyone else on Your behalf, to any money owing by You whether in connection with the CHP Agreement or otherwise and may disregard any directions You give as to how any money is to be applied.
- 18. CERTIFICATES AND NOTICES**
- 18.1. Any notice required to be served on You under the CHP Agreement will be deemed to have been properly served if left at or sent by prepaid post to the last known address, or sent by facsimile to Your last notified facsimile number.
- 18.2. Any notice sent by post to You will be taken to have been received 3 days after the date of posting. Any facsimile to You will be taken to have been received when the transmitting machine records that a successful transmission has been made.
- 18.3. You must advise us as soon as practicable if You change Your address.
- 18.4. Any notice required to be served on us under the CHP Agreement must be:
- a) in writing and clearly readable;
 - b) signed by You (or Your authorised signatory);
 - c) left at our address or sent by registered post to our last known address or to our last notified facsimile number.
- 18.5. Proof of posting or of dispatch of facsimile is proof of receipt:
- a) in the case of a letter, where a receipt is produced showing that the letter was sent by registered post, on the third Business Day after the date of posting within Australia; and
 - b) in the case of a facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause.
- 18.6. If the time of dispatch of a facsimile is not on a Business Day, or is after 4.00 pm (local time) on a Business Day, it will be deemed to have been received at the commencement of business on the next Business Day.
- 19. POWERS YOU GIVE TO US**
- 19.1. You irrevocably appoint us and our employees Your attorneys with power to do anything considered by us to be desirable to give effect to the CHP Agreement including the completion or correction of any details in the CHP Schedule, the doing of anything You should have done pursuant to the CHP Agreement and anything we consider desirable to protect our rights under the CHP Agreement.
- 19.2. In particular, You irrevocably appoint us Your attorney with full power to sue for and recover any claims for loss or damage in relation to the Goods, under any Insurance or otherwise, to compromise any such claim in Your name, or in the names of You and us, and to give effectual releases and receipts in respect of any such claim.
- 19.3. You indemnify us against any loss, damage, costs or claim incurred or made and arising out of acting as Your attorney.

20. ECOMMERCE

- 20.1. Information in connection with Your CHP Agreement, including Your finance application, CHP Schedule and other details You provide to us, will be maintained on the Selfco Website. You will be able to access this information only by using a user name and password, which we will provide to You. Any document which we could otherwise send You by hard copy, that is, post or facsimile, may be sent to You by email.
- 20.2. You acknowledge that, due to the nature of the internet, we cannot and do not guarantee the security of information contained on the Selfco Website or transmitted to You by email or other electronic means. However, we employ our reasonable endeavours to safeguard the security of information regarding Your CHP Agreement on the Selfco Website.
- 20.3. Subject to clause 13, we take no responsibility for any loss or damage suffered or incurred by You which arises from the inclusion of information regarding Your Hiring on the Selfco Website, nor, for, or in respect of, any claim, demand, action or suit that is made or brought against us in respect of any loss or damage to any reputation, property or any other loss or damage whatsoever arising out of, or as a consequence of any act or omission (whether or not negligent or unlawful) by us, our employees, agents or contractors in storing Your information on the internet, or transmitting such information by means via the internet.

21. FINANCIAL INTERMEDIARY

You acknowledge that our role in this transaction may have been that of a financial intermediary or agent and that we may receive commission brokerage or similar fees which are recovered as part of the Rent Instalments.

22. GENERAL PROVISIONS

- 22.1. No delay or granting of time or other indulgence by us will affect our rights to enforce Your obligations or exercise any right under the CHP Agreement.
- 22.2. No waiver by us of our rights will be implied from anything done or omitted by us. Any express waiver by us of any right will not be deemed to extend to any continuing or recurring default by You of Your obligations.
- 22.3. Every provision of the CHP Agreement is independent of every other provision. Any provision which is prohibited or unenforceable in any jurisdiction is, to the extent of the prohibition or unenforceability, deemed removed without invalidating, so far as possible, the remaining provisions.
- 22.4. We may, without prior notice to You, but subject to Your rights under the CHP Agreement, sell or assign, either absolutely or by way of security, our rights or interests in the CHP Agreement and the Goods.

23. APPLICABLE LAW

The CHP Agreement (and any guarantee and indemnity) is governed by the law in force in New South Wales. You and the guarantor submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

24. EXCLUSION OF LAWS

Any present or future law that varies Your or the guarantor's obligations under this CHP Agreement is excluded to the extent allowed by law if it affects our rights or remedies adversely.