

## Selfco Leasing Lease Terms and Conditions L12/2020

These terms are used by Specialist Equipment Leasing Finance Company Pty Ltd ABN 58 099 591 616 ("we" or "us") for Lease 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 Lease Schedule.

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

**"Commencement Date"** means the date set out in the Lease Schedule or, if none is set out, the date you take delivery of the Goods.

**"Default Event"** means any of the events described in clauses 13 and 14.

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

**"Goods"** means each and every item specified in the Lease 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 Lease.

**"Guarantor"** means anyone who at any time guarantees to us the payment of all or any part of the money and other liabilities of you to us under or in relation to the Lease Agreement and in any capacity, irrespective of whether the debts or liabilities are present or future actual, prospective, contingent or otherwise, and includes the guarantor specified in the Leasing Schedule.

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

**"Insolvency Event"** means the happening of any of the following events:

- a) an application is made to a court for an order or an order is made appointing a liquidator, provisional liquidator in respect of a person (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of a person, an order is made or any effective resolution is passed for the winding up of a person, or a person is deregistered or dissolved;
- c) except to reconstruct or amalgamate while solvent on terms approved by us, a person enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
- d) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of a person;
- e) a person is or is deemed or presumed by law or a court to be insolvent;
- f) a person takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to the Hirer;
- g) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of a person under the law of any applicable jurisdiction; and
- h) a person commits an act of bankruptcy.

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

**"Interim Period"** means, in the event that the Commencement Date is not the first day of the period to which the first Lease Instalment relates, the period between those two days.

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

**"Lease Instalment"** means all of the Lease Instalment Amounts shown in the Schedule;

**"Lease Schedule"** means a schedule in such form as we may give you which if completed in accordance with these terms will form a Lease Agreement.

**"Market Value"** means the value of the Goods at the relevant date as determined by us acting reasonably.

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

**"PPS Law"** means:

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

**"Proceeds"** has the meaning given to that term under the PPSA. **"Rebate Rate"** means 5% less than the Implicit Rate.

**"Recoverable Amount"** is the total of the following:

- a) the sum of each Net Lease Instalment and any other money then due and owing to us but not paid; plus
- b) the sum of the Net Lease Instalments owing but not yet due discounted by applying to each Net Lease Instalment the Rebate Rate (in each case the Rebate Rate applies to each Net Lease Instalment from the date the Recoverable Amount is payable to the date the Net Lease Instalment would have been due); plus
- c) any other amount payable under this Lease Agreement.

However:

- d) if termination occurs within 3 months before or at any time after the end of the Minimum Term, since you are required to give us notice of termination of the Lease under clause 3, the Net Lease Instalments referred to in subclause (b) will be those that would have been payable if you had given a notice of termination under clause 3 on the date of termination of the Lease; but
- e) if, prior to the termination of the Lease, you had given a notice under clause 3.1, the Net Lease Instalments referred to in subclause (b) will be those which would have been payable if the Lease had terminated as a result of your notice.

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

**"Receiver"** includes a receiver, or receiver and manager;

**"Security Interest"** means:

- a) a security interest under the PPSA;
- b) any other mortgage, pledge, lien or charge; and
- c) 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.

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

**"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.

**"Small Business"** has the meaning applied by the Australian Financial Complaints Authority (and its successors) at the date of the Lease Agreement.

**"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.

**"you"** or **"your"** means the person named as a hirer in the Lease Schedule, and each and every one of them, jointly and severally.

### LEASE TERMS & CONDITIONS

1.2 In the interpretation of the Lease Agreement:

- a) 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;

- b) any warranty, obligation or right which binds or benefits two (2) or more persons under the Lease Agreement binds or benefits those persons jointly and severally; and
- c) "includes" means includes but without limitation.

## **2. AGREEMENT**

- 2.1 You may offer to Lease Goods from us by giving us a signed Lease Schedule. You may only withdraw or vary this offer with our consent. Our consent will be in writing and will not be unreasonably withheld or delayed. If we accept an offer made by you in a Lease Schedule, then we will have entered into a Lease Agreement with you.
- 2.2 Our acceptance of your offer will occur on the earlier of:
  - a) the date that we sign the Lease Schedule; and
  - b) the date that we pay for the Goods for the purposes of the Lease 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 Lease (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 Lease Agreement.
- 2.4 Our acceptance of your offer may be subject to a guarantee being given by someone nominated by us and in a form approved by us.
- 2.5 If you have executed the Lease 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 Lease Agreement supersedes any existing agreement relating to the Lease of Goods between you and us. To the extent there is any inconsistency, the terms of the Lease Agreement will prevail.

## **3. TERM OF LEASE AGREEMENT**

- 3.1 The Lease Agreement will begin on the Commencement Date
- 3.2 Unless terminated earlier, the Lease Agreement will expire at the end of the Minimum Term if, and only if, you confirm that you want this to happen by notice in writing to us not more than 6 nor less than 3 months before the end of the Minimum Term.
- 3.3 If you do not give the notice specified in clause 3.2, the relevant Lease Agreement will be extended upon the same terms until you terminate it by giving us written notice, which will take effect 3 months after the next Lease Instalment payment date.
- 3.4 If you wish to vary the Lease 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 the Lease Agreement, or if the Goods constitute Inventory, as defined under the PPSA, then not prior to the date that we pay for the Goods under the Lease Agreement if you obtain possession of the Goods before the commencement of the Lease Instalments, you will do so at your own risk and not as our agent.
- 4.4 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 LEASE AND OTHER MONEY**

- 5.1 You must pay all of the Lease Instalments to us on or before the dates set out in the Lease Schedule for the term of the Lease, as determined in accordance with clause 3. In addition to the Lease Instalments set out in the Lease Schedule, you must pay to us on demand Lease Instalments for any Interim Period, calculated by dividing the first Lease Instalment set out on the Lease Schedule by the number of days in the period to which that Lease Instalment relates and multiplying that amount by the number of days in the Interim Period. Payment of this additional amount does not alter your liability to pay the Lease Instalments set out in the Lease Schedule.
- 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 The Lease Instalments and all other amounts payable under the Lease 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.
- 5.4 A payment which you make is not considered made until we have actually received the money. You must pay interest to us at the Default Rate on any money payable under the Lease Agreement which may from time to time be overdue including any damages which you may be liable to pay to us because of a Default Event.
- 5.5 You must pay or reimburse us promptly on demand for:
  - a) All reasonable costs, charges and expenses in connection with the negotiation, preparation, execution, stamping and registration of the Lease Agreement;
  - b) our costs, charges and expenses in connection with any consent, or any exercise or non-exercise of rights (including those arising from a Default Event);
  - c) all costs and expenses (including legal costs on a full indemnity basis or solicitor and own client basis, whichever is higher) which we incur in exercising any of our rights under the Lease 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 Lease Agreement.
  - d) 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 Lease Agreement or the Lease and we may, by notice to you, vary the Lease Instalments due to any variation in any such government charges.
- 5.6 In the following sub-clauses, GST, Input Tax Credit, Input Taxed and Taxable Supply have the same meanings as under A New Tax System (Goods and Services) Act 1999 (Cth).
- 5.7 Subject to clause 5.8, if we are or become liable to pay GST in relation to any Taxable Supply made to you under or in connection with the Lease Agreement, in addition to any other amounts payable or consideration provided by you under this Lease 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.
- 5.8 Clause 5.7 does not apply to the Lease Instalments to the extent that they are expressed to be inclusive of GST.
- 5.9 A certificate issued by us as to an amount of money owing under the Lease Agreement is prima facie evidence of that fact.
- 5.10 Your obligation to pay the Lease 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.

5.11 If you are required by the Lease Schedule to pay a deposit, it is a payment in consideration of our entry into the Lease Agreement and is not refundable.

5.12 We may, without notifying you or any Guarantor:

- a) 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 Lease Agreement; and
- b) 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 Lease Agreement; and
- c) 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:

- a) all information which you have given to us is correct and not misleading;
- b) in entering into the Lease 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 Lease 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;
- c) all negotiations in relation to the supply of the Goods have been conducted between you and the Supplier and were conducted in good faith and in the ordinary course of business and all information concerning the Goods has been supplied to us by the Supplier and no information has been supplied by us; and
- d) no representations, inducements or warranties of any kind have been made by us or our agents or representatives relating to the Goods or their fitness, suitability or adequacy for all or any of your purposes; and
- e) you are authorised to enter into the Lease Agreement and in doing so you are not in breach of any authorisations or regulations affecting or controlling you or your business.

6.2 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 Lease Agreement (including without limitation the payment of Lease Instalments under Clause 5).

6.3 We are not liable to you if there is any variation in the Goods or your use of them which arises out of anything done by you, the Supplier or any other supplier of anything 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 Lease 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

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:

- a) the amount we pay for any of these things will be included in the calculation of the Lease Instalments;
- b) your rights to receive or have the benefit of the warranties, services or software are separate from the Lease Agreement and found only in your arrangements with the supplier of warranties, services or software;
- c) the amount which we may recover from you as part of the Recoverable Amount under clause 17 will include the amount so paid by us (less any amount that you have already paid to us as part of a Lease 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 Lease; and
- d) 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, any amount paid by us (including any amount paid by us to a supplier at your request may be recovered, you must arrange for the refund to be made, and we are not liable to seek or pay any refund to you.

6.7 If you have executed the Lease Agreement as trustee of a trust ("Trust"), whether or not that fact is disclosed to us, you undertake that:

- a) you enter into the Lease Agreement for a proper purpose of the Trust;
- b) you have power and authority under the terms of the Trust to enter into the Lease Agreement;
- c) 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 Lease 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 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.

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 (which will not be unreasonably withheld or delayed).

7.5 You must not remove the Goods from the Location set out in the Lease 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.
- 7.11 You agree to use the Goods at your own risk.
- 8. COMPUTER EQUIPMENT**
- 8.1 The following sub-clauses 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 Lease 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 Lease 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.
- 9.2 You agree that we may have entered into the Lease 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 Lease Agreement, and may, in any way, charge or deal with our interests under the Lease Agreement without notice to you. We may provide information about this Lease Agreement, you and any of your related bodies corporate (as defined in the Corporations Act 2001) to any person with whom we have dealings in relation to the Lease 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 the Lease 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 the Lease Agreement and the performance of all your other obligations under this Lease Agreement. You agree that the Security Interest created by this Lease Agreement attaches or otherwise takes effect immediately upon you obtaining possession of the Goods. The Security Interest created by the Lease Agreement extends not only to the Goods but also to all and any Proceeds arising from any dealings with the Goods.
- 9.5 You must ensure that any replacement part becomes our property and is subject to the Security Interest in our favour created by the Lease Agreement.
- 9.6 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 Lease 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 Lease Agreement will breach this Lease Agreement, and you must not remove or change, or allow any person to remove or change, that plate or sign unless we first give our consent (which will not be unreasonably withheld).
- 9.7 You must not part with possession of the Goods without our consent (which will not be unreasonably withheld). If you do part with possession of the Goods or deal in any way with the Goods in breach of the Lease Agreement, you acknowledge that we have not authorised such a dealing or agreed that such a dealing would extinguish the Security Interest created by the Lease 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 promptly of any change in your address.
- 10.2 You must produce the Goods for inspection whenever we request you to do so and must for such purpose permit us (or any person authorised by us) to enter at all reasonable upon any premises where the Goods may be located.
- 10.3 You must notify us promptly following any loss or damage to the Goods.
- 10.4 You must in a proper and efficient manner conduct and maintain any business carried on by you in connection with which the Goods are used and shall keep the business open at all times usual for a business of a similar nature. You must not discontinue or vary the use of the Goods in connection with this business.
- 10.5 You must not part with possession of the Goods nor create or permit to exist any mortgage, encumbrance, lien or charge in respect of the Goods, nor pledge, sublet, assign or sell the Goods or any interest or benefit under the Lease Agreement or attempt or purport to do so nor otherwise deal in a manner inconsistent with our title to the Goods.
- 10.6 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 PPSA, including any registration, or any response to an amendment notice or demand or any request under the PPSA.
- 10.7 You indemnify us against, and must therefore pay us for, any liability, loss (including loss of profit), costs, charges or expenses (including legal expenses on a full indemnity basis or solicitor and own client basis, whichever is higher) arising from or incurred in connection with:
- exercising or attempting to exercise any right or remedy under this Lease Agreement;
  - a Default Event occurring;
  - a representation or warranty made to us whether in this Lease Agreement or otherwise being incorrect; and

- d) any loss, reduction or disallowance of any depreciation allowance or of any tax deduction or rebate of any income or other tax upon which we have reasonably relied in calculating the Lease Instalments; except where such loss is caused by the mistake, fraud, wilful misconduct or gross negligence of us, our employees or a receiver we appoint.

10.8 During the term of the Lease, you must promptly when requested by us provide us with copies of financial statements and other information that we reasonably request.

#### **11. INSURANCE**

11.1 You must at all times during the Lease (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 You must not do or fail to do anything which would:

- result in any Insurance claim being refused or not met in full;
- vary any Insurance in any material respect without our consent;
- enforce, conduct, settle or compromise any Insurance claim without our consent; or
- contravene, prejudice or invalidate the Insurance policy or subject it to an increased premium.

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 Lease 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 If the Goods are lost, destroyed or damaged, any proceeds from Insurance must be paid to us unless we agree to the proceeds being used to repair or replace the Goods. Any Goods repaired or substituted will be Goods subject to this Lease Agreement. you must notify us and every insurer promptly of any damage to or destruction of the Goods and must take all steps necessary to preserve all rights under any Insurance, including the timely making of claims.

11.7 If we determine (acting reasonably) that the Goods have been stolen and not recovered or have been damaged beyond economical repair there is a Total Loss, and we may by notice terminate this lease, in which case you must pay to us:

- the Recoverable Amount plus the Market Value; less
- any amount we receive as a payout from any insurer in respect of the Total Loss.; and
- if we receive any amount from an insurer after you have paid the above money in full, we will pay that amount to you.

11.8 Upon termination of the Lease, you will be solely responsible for the termination of any Insurance and any refund of premium.

11.9 If you do not give us evidence of insurance acceptable to us, we may obtain Insurance covering our interest in the Goods you will be in breach of the terms of this Lease Agreement. In this case we may obtain insurance covering our interest in the Goods from an insurer of our choice. If we take out the insurance, you must on demand pay us the costs incurred by us.

#### **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 (including those set out in the Competition and Consumer Act 2010 (Cth)), 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 Despite clause 12.1, nothing in a Lease Agreement excludes, restricts or modifies any obligation we have that cannot be lawfully excluded.

#### **13. DEFAULT EVENTS**

13.1 If any one or more of the following occur, we may decide a Default of Event has occurred.

- You fail to pay any one or more Lease Instalments in whole or in part by the due date;
- You default in complying with any of your obligations under clause 11 (Insurance);
- You purport to assign or in any way deal with the Goods or any of your rights under the Lease Agreement;
- You default in complying with any obligation under the Lease Agreement (except where there is an event described in subclauses 13.1 (a) to 13.1 (c) above) and the default is not remedied within 14 days of us giving you notice of the default;
- Any distress or execution is levied or enforced against any of your assets or property or the Goods, or the Goods are lawfully seized or impounded.
- An Insolvency Event occurs to you or your Guarantor.
- You are an individual and you die or become incapable of managing your own affairs by reason of mental illness or other condition;
- The holder of any security 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;
- any warranty given or representation made by you or Guarantor on your behalf in relation to the Lease Agreement is materially false or misleading (including by omission) and is such that we would not have leased the Goods to you or would only have leased on different terms, if we had known the correct information.
- All or any part of the Lease Agreement becomes void, illegal, invalid, unenforceable or of limited or reduced force, effect or value.
- We have, at our discretion, determined that there has been a change in the credit risk associated with the Lease Agreement from that which we assessed before the Lease 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 Lease Agreement) and no agreement is made with you as to a change to the terms of the Lease Agreement which is satisfactory to us.

#### **14. OUR RIGHTS UPON A DEFAULT EVENT**

14.1 You will be deemed to have repudiated the Lease Agreement if a Default Event occurs.

14.2 Subject to clauses 14.4 to 14.6 inclusive, if a Default Event occurs, we will be entitled to terminate the Lease immediately by written notice to you or by taking possession of the Goods by force if necessary (and for that purpose may enter any premises where the Goods are located).

14.3 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.

14.4 If you are a Small Business or an individual, we will only act on a specific non-monetary Default Event if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:

- a) you or a Guarantor's ability to meet your or their financial obligations to us;
  - b) our credit or security risk (or our ability to assess these); or
  - c) our legal or reputational risk.
- 14.5 If you are a Small Business or an individual, we will not:
- a) terminate this Lease Agreement;
  - b) take enforcement action against you; or
  - c) enforce any security held to secure repayment of this Lease Agreement, unless:
    - d) we have given you at least 30 days written notice of the Default Event; and
    - e) if the Default Event is rectifiable, you have not rectified that Default Event; and
    - f) no Default Event of the same type has arisen during that period.
- 14.6 We may give less than 30 days notice or no notice if:
- a) based on our reasonable opinion, it is necessary for us to act to manage an immediate risk;
  - b) an Insolvency Event occurs to you;
  - c) enforcement action is taken against you by another financier;
  - d) we reasonably believe that you or a Guarantor have not complied with the law or any requirement of a statutory authority; or
  - e) we have already given you a notice to rectify a non-monetary Default Event.
- 14.7 Upon such termination of the Lease, or if you elect to terminate the Lease early, you are immediately liable to pay to us the Recoverable Amount, together with any other amounts payable under the Lease Agreement plus if the Goods have not been returned or recovered by us, the Market Value of the Goods.
- 14.8 We can take action even if we do not do so promptly after a Default Event occurs. We do not lose any rights or forgive any Default Events unless we do so in writing.
- 14.9 Our rights and remedies under the Lease Agreement may be exercised by any of our employees or any other person we authorise.
- 14.10 We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from fraud, negligence or wilful misconduct by us, our employees, or a receiver we appoint.
- 15. OBLIGATIONS AT END OF LEASE**
- 15.1 At the end of the Lease, however it is terminated, we are entitled to possession of the Goods and you must promptly return the Goods in good working order and condition (fair wear and tear excepted) to the place specified by us and do all things necessary to transfer to us any registration, licence or certificate in respect of the Goods, including paying all fees, duties or costs connected with doing so.
- 15.2 If the Goods are not returned to us at the end of the Lease, either with or without our consent, you must pay us by way of Lease, or as damages for your failure to return the Goods, an amount equal to 1 day's proportion of a Lease Instalment for each day until the Goods are delivered to us. You must also pay us for all costs and expenses that we incur in recovering or attempting to recover possession of the Goods. We may without any prior demand or notice take possession of the Goods by force if necessary and for that purpose may enter any premises where the Goods are located.
- 15.3 If you do not return the Goods to us when you are due to do so and we are not able to recover possession of them within a reasonable period of time, we may by notice to you declare them to be lost and you must pay us as compensation for their loss, an amount calculated (as at the date of our notice) in accordance with clause 14.3 and any cost incurred by us in attempting to recover the Goods.
- 15.4 Upon repossession of the Goods, if any software other than application software forms part of the Goods, you assign or licence to us, so far as you can, all of your rights in the software with power for us to assign or licence such rights to others.
- 15.5 If the Goods were in a damaged condition when received by us, the proceeds of any Insurance received by us will also be deducted from the amount you must pay. However, in these circumstances, the insurer may be entitled to take the Goods and, if this happens, we may receive nothing from the sale of the Goods.
- 16. VALUE OF GOODS UPON TERMINATION**
- 16.1 When the Goods are returned to our possession upon termination (whether early or not) of the rental and they are not in good working order and condition, you must pay to us any amount which notify to you as being the:
- a) difference between the Market Value of the Goods and the Market Value of other goods of that type which are of good condition for goods of a similar age; or
  - b) if we choose this (and if it is less than the amount which would be payable under sub-clause 16.1(a), the cost of repairing the Goods to such a condition.
- 17. PERSONAL PROPERTY SECURITIES LEGISLATION**
- 17.1 This clause has effect despite any other provision of the Lease Agreement.
- 17.2 A term defined in the PPS Law has the same meaning when used in this clause.
- 17.3 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 17.3(a) and 17.7.
- 17.4 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 Lease Agreement under the PPS Law.
- 17.5 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 Lease Agreement; or
  - c) do any other thing, that we consider necessary or desirable to:
    - A) ensure that this Lease Agreement or any Security Interest arising under this Lease Agreement is enforceable;
    - B) register, protect, perfect, record or better secure our position in respect of this Lease Agreement under PPS Law;
    - C) preserve our priority position as contemplated by this Lease Agreement; or
    - D) overcome any defect or adverse effect arising from the PPS Law.
- 17.6 You must:
- a) comply with the requirements of a notice under clause 17.5 within the time stated 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 promptly if your name, address, identifying number or any other information provided by you for inclusion on a Lease Schedule which forms part of a Lease Agreement changes.
- 17.7 The following sections of the PPSA will not apply, and you waive any rights you would otherwise have under them:
- a) section 117 (notice of a decision to enforce a Security Interest in accordance with land law decisions);

- b) section 121(4) (notice of Lessee of enforcement of Security Interest in liquid assets);
- c) section 130 to the extent that it requires us to give any notice to the Lessee (notice by Secured Party of disposal of Collateral);
- d) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
- e) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
- f) section 135 (notice of retention of Collateral)
- g) section 142 (redemption of Collateral); and
- h) section 143 (reinstatement of security agreement).

17.8 For the avoidance of doubt, in addition to the powers under section 125 of the PPSA, we may take any action after default authorised by the Lease Agreement or the law, including delaying any disposal, leasing or action to retain the Goods.

#### 18. 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 Lease Agreement or otherwise and may disregard any directions you give as to how any money is to be applied.

#### 19. CERTIFICATES AND NOTICES

19.1 Subject to any applicable laws, we may give you any notice, statement, demand or court document (including any collection notice, default notice, court originating process or other court document) by:

- a) giving it to you personally;
- b) leaving it at your last known residential or business address;
- c) posting it to your last known residential or business address;
- d) by electronic means to your last known electronic address; or
- e) any other means permitted by law.

19.2 Subject to any applicable laws, you consent to any notice, statement, demand or court document connected with your Lease Agreement or any Security Interest given under your Lease Agreement being given to you by electronic means, including any documents that would otherwise require personal service in accordance with the relevant court rules in force in the jurisdiction in which the Security Interest is located.

19.3 Any notice required to be served on you under the Lease Agreement will be deemed to have been properly served if left at or sent by prepaid post to the last known address or emailed to your last notified email address.

19.4 Any notice sent by post to you will be taken to have been received when it would be delivered in the ordinary course of the post. Any email sent to you will be taken to have been received when the transmitting machine records that a successful transmission has been made.

19.5 You must advise us as soon as practicable if you change your address, facsimile number or email address.

19.6 Any notice required to be served on us under the Lease Agreement must be:

- a) in writing and clearly readable;
- b) signed by you (or your authorised signatory) by hand or electronically;
- c) left at our address or sent by registered post to our last known address or to our email address.

19.7 Proof of posting or of dispatch of email 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 an email, upon production of a log or report from our email server which indicates that the email was transmitted without error.

19.8 If the time of dispatch of an email 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.

#### 20. POWERS YOU GIVE TO US

20.1 You irrevocably appoint us, our officers and our employees as your attorneys with power to do anything considered by us to be desirable to give effect to the Lease Agreement including the completion or correction of any details in the Lease Schedule, the doing of anything you should have done pursuant to the Lease Agreement and anything we consider desirable to protect our rights under the Lease Agreement.

20.2 In particular, you irrevocably appoint us as 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 comprise 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.

20.3 You indemnify us against any loss, damage, costs or claim incurred or made and arising out of acting as your attorney, except where such loss arises from the mistake, fraud, negligence or wilful misconduct of us or our employees or a receiver we appoint.

#### 21. ECOMMERCE

21.1 Information in connection with your Lease Agreement, including your finance application, Lease Schedule and other details you provide to us, may 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.

21.2 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 you and your Lease Agreement on the Selfco Website.

21.3 We take no responsibility for any loss or damage suffered or incurred by you which arises from the inclusion of information regarding your Lease 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.

#### 22. 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 Lease Instalments.

#### 23. GENERAL PROVISIONS

23.1 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. No waiver of our rights, powers or privileges under the Lease Agreement is effective unless made in writing.

23.2 Every provision of the Lease Agreement is independent of every other provision. Any provision which is prohibited without the lender's written consent which will not be unreasonably withheld or delayed, 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.

23.3 We may, without prior notice to you, but subject to your rights under the Lease Agreement, sell, novate, assign or participate, either absolutely or by way of security, our rights or interests in the Lease Agreement and the Goods. You must sign anything and do anything we reasonably require to enable any dealing with the Lease Agreement,

any security and any document or agreement entered into or provided under or in connection with the Lease Agreement.

23.4 You must not assign, novate, dispose or otherwise transfer any of your rights or obligations under the Lease Agreement without our prior written consent, which will not be unreasonably withheld or delayed.

**24. APPLICABLE LAW**

The Lease 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.