

1. Definitions

- 1.1 "Two Way Hire Services" shall mean Tylejet Pty Ltd T/A Two Way Hire Services, its successors and assigns or any person acting on behalf of and with the authority of Tylejet Pty Ltd T/A Two Way Hire Services.
- 1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Two Way Hire Services to provide the Equipment as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by Two Way Hire Services to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Two Way Hire Services to the Client.
- 1.4 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Two Way Hire Services to the Client.
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the Client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Equipment via the website.**
- 1.7 "Price" shall mean the cost (plus any GST where applicable) of the hire of the Equipment as agreed between Two Way Hire Services and the Client.

2. Errors and Omissions

- 2.1 The Client acknowledges and accepts that Two Way Hire Services shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Two Way Hire Services in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Two Way Hire Services in respect of the Services.
- 2.2 In the event such an error and/or omission occurs in accordance with clause 2.1, and is not attributable to the negligence and/or wilful misconduct of Two Way Hire Services; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

3. Price and Payment

- 3.1 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due seven (7) days following the date of the invoice.
- 3.2 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Two Way Hire Services nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.3 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by Two Way Hire Services.

4. Equipment Hire and Client Responsibilities

- 4.1 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment, pledge Two Way Hire Services' credit for repairs to the Equipment, nor be entitled to take a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Two Way Hire Services to the Client.
 - (d) ensure that all persons operating Equipment are suitably instructed in the Equipment's safe and proper use or operate the Equipment and shall provide evidence of the same to Two Way Hire Services upon request;
 - (e) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party or unauthorised persons for any other work;
 - (f) allow Two Way Hire to inspect the Equipment;
 - (g) be responsible for all costs incurred in cleaning/repair and any replacement costs for the Equipment;
 - (h) be responsible for any lost hire fees the Two Way Hire Services would have otherwise been entitled to for the Equipment, under this, or any other hire contract.
- 4.2 The Client accepts full responsibility for:
- (a) the safekeeping of the Equipment and the Client agrees to insure, or self-insure, Two Way Hire Services' interest in the Equipment and agrees to indemnify Two Way Hire Services against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim;

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- (b) and shall keep Two Way Hire Services indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 4.3 The Client must inspect the Equipment on delivery and must within twenty-four (24) hours of delivery notify Two Way Hire Services in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Two Way Hire Services to inspect the Equipment.
- 4.4 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment departs from Two Way Hire Services' premises and will continue until the return of the Equipment to Two Way Hire Services' premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 4.5 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 4.6 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Two Way Hire Services confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Two Way Hire Services immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 5. Default and Consequences of Default**
- 5.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Two Way Hire Services' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 5.2 If the Client owes Two Way Hire Services any money the Client shall indemnify Two Way Hire Services from and against all costs and disbursements incurred by Two Way Hire Services in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Two Way Hire Services' contract default fee, and bank dishonour fees).
- 5.3 Further to any other rights or remedies Two Way Hire Services may have under this contract, if a Client has made payment to Two Way Hire Services by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Two Way Hire Services under this clause 5 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 6. Privacy Policy**
- 6.1 All emails, documents, images or other recorded information held or used by Two Way Hire Services is Personal Information, as defined and referred to in clause 6.3, and therefore considered Confidential Information. Two Way Hire Services acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Two Way Hire Services acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Two Way Hire Services that may result in serious harm to the Client, Two Way Hire Services will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 6.2 Notwithstanding clause 6.1, privacy limitations will extend to Two Way Hire Services in respect of Cookies where transactions for purchases/orders transpire directly from Two Way Hire Services' website. Two Way Hire Services agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Two Way Hire Services when Two Way Hire Services sends an email to the Client, so Two Way Hire Services may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Two Way Hire Services' website.
- 6.3 The Client agrees for Two Way Hire Services to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Two Way Hire Services.
- 6.4 The Client agrees that Two Way Hire Services may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 6.5 The Client consents to Two Way Hire Services being given a consumer credit report to collect overdue payment on commercial credit.
- 6.6 The Client agrees that personal credit information provided may be used and retained by Two Way Hire Services for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 6.7 Two Way Hire Services may give information about the Client to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 6.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 6.3 above;
- (b) name of the credit provider and that Two Way Hire Services is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Two Way Hire Services has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Two Way Hire Services, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 6.9 The Client shall have the right to request (by e-mail) from Two Way Hire Services:
- (a) a copy of the Personal Information about the Client retained by Two Way Hire Services and the right to request that Two Way Hire Services correct any incorrect Personal Information; and
- (b) that Two Way Hire Services does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 6.10 Two Way Hire Services will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 6.11 The Client can make a privacy complaint by contacting Two Way Hire Services via e-mail. Two Way Hire Services will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

7. Title

- 7.1 The Equipment shall at all times remain the property of Two Way Hire Services and is returnable on demand by Two Way Hire Services.
- 7.2 If the Client fails to return the Equipment to Two Way Hire Services then Two Way Hire Services or Two Way Hire Services' agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 7.3 In the event that the Equipment is not returned to Two Way Hire Services in the condition in which it was delivered Two Way Hire Services retains the right to charge the Client the full cost of repairing the Equipment. In the event Equipment is not returned at all and Two Way Hire Services is unable to repossess the Equipment as per clause 7.2 then Two Way Hire Services shall have right to charge the Client the full cost of replacing the Equipment.

8. Personal Property Securities Act 2009 ("PPSA")

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Equipment and/or collateral (account) – being a monetary obligation of the Client to Two Way Hire Services for Services – that has previously been supplied and that will be supplied in the future by Two Way Hire Services to the Client.
- 8.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Two Way Hire Services may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Two Way Hire Services for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Two Way Hire Services;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Two Way Hire Services; and
- 8.4 The Two Way Hire Services and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Two Way Hire Services the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by Two Way Hire Services under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 8.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period shall clause 8 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 8 will apply generally for the purposes of the PPSA.

9. Security and Charge

- 9.1 In consideration of Two Way Hire Services agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies Two Way Hire Services from and against all Two Way Hire Services' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Two Way Hire Services' rights under this clause.
- 9.3 The Client irrevocably appoints Two Way Hire Services and each director of Two Way Hire Services as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Service of Notices

- 10.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 10.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

11. Trusts

- 11.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Two Way Hire Services may have notice of the Trust, the Client covenants with Two Way Hire Services as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Two Way Hire Services (Two Way Hire Services will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

12. General

- 12.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which Two Way Hire Services has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.
- 12.3 The Two Way Hire Services shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Two Way Hire Services of these terms and conditions (alternatively Two Way Hire Services' liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment hire).
- 12.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 12.5 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.