



LEASE AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

- (a) "**Agreement**" means the terms set out in this Lease Agreement and the details set out in the Order confirmation, including any annexed Schedules;
- (b) "**Beverages**" means beer, cider, wine, coffee, kombucha, sprit-based beverages or any other liquid or substance approved by us in writing;
- (c) "**Business Day**" means a day other than a Saturday, Sunday or public holiday in Wellington, New Zealand;
- (d) "**Commencement Date**" means the date the Order is confirmed by email by us;
- (e) "**Costs of Repossession**" means all costs and expenses incurred by us in effecting, or attempting, repossession of the Equipment, satisfying any third-party claim, and in storing, repairing to good working order and condition, insuring, valuing and disposing of, the Equipment after repossession;
- (f) "**Discount Rate**" means the rate determined by us being a rate equal to 8% per annum;
- (g) "**Early Termination Amount**" means, as at the date of early termination of this Agreement, any amounts then due but unpaid under this Agreement, plus the Rental Payments (net of GST) which, but for the early termination, would have been payable by you under this Agreement as from the date of early termination to the end of the Term, reduced to a present value by applying the Discount Rate to such Rental Payments;
- (h) "**Equipment**" means the kegs and other goods specified in the Order and includes any part of them;
- (i) "**Fair Wear and Tear**" means:
 - (i) scratches and minor dents that do not adversely impact on the life or the ability of the Equipment to be processed and dispense Beverages as required; and
 - (ii) minor damage to chimes, andexcludes (without limitation) damage and/or distortion to the shape of the Equipment resulting from:
 - (iii) exposure to extreme low temperatures causing the freezing of internal liquid; or
 - (iv) exposure to extreme high temperatures causing hydraulic internal pressure when the Equipment is overfilled;
- (j) "**GST**" means goods and services tax as defined in the New Zealand *Goods and Services Act* 1985 and as amended from time to time;
- (k) "**Handling Procedures**" means the procedures set out in the Kegstar Handling Document as amended by us from time to time;
- (l) "**Kegstar Handling Document**" means the Keg Handling Guide as provided with the Order confirmation and as amended from time to time by us;
- (m) "**MyStar**" means the online account management portal made available by us from time to time or any successor account management method that we may nominate in our sole discretion;
- (n) "**Order**" means the applicable Order submitted online by you and accepted and confirmed by us via email, and governed by the terms of this Agreement;
- (o) "**PPS Register**" means the Personal Property Securities Register established under the PPSA;
- (p) "**PPS Security Interest**" means a security interest under the PPSA;
- (q) "**PPSA**" means the *Personal Property Securities Act* 1999;
- (r) "**Rental Payments**" means the Rental Payments specified in the Order as amended by this Agreement;
- (s) "**Security Interest**" means:
 - (i) a PPS Security Interest;
 - (ii) any other mortgage, pledge, lien or charge; and
 - (iii) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;



- (t) **"Serial Numbered Property"** means any Equipment which may or must be described by serial number in a registration under the PPSA;
- (u) **"Special Conditions"** means special conditions, if any, set out in Schedule 1 and annexed to the Order confirmation email;
- (v) **"Tax Invoice"** means a valid Tax Invoice issued under GST Law;
- (w) **"Term"** means the Term of this Agreement referred to in the Order and any Further Term under the terms of this Agreement;
- (x) **"we"** or **"us"** or **"our"** means Kegstar New Zealand Limited NZ Company Number 6038727 and, where the context permits, includes any of our related bodies corporate;
- (y) **"you"** means the Customer referred to in the applicable Order submitted online by you and confirmed by us via email.

1.2 In this Agreement, unless the context otherwise requires:

- (a) A reference in this Agreement to a party (including any guarantor) includes a reference to that party's legal personal representatives, successors and permitted assigns;
- (b) A reference to this Agreement includes any schedule to it;
- (c) Words importing the singular include the plural and vice versa;
- (d) Headings shall be ignored in construing this Agreement;
- (e) If any party is comprised of more than one person, those persons' obligations are joint and several;
- (f) A reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) References to persons include references to corporations and other bodies and entities;
- (h) References to statutes include all statutes amending, consolidating or replacing such statutes;
- (i) The word **includes** in any form is not a word of limitation; and
- (j) A reference to a clause, party, schedule or annexure in or to this Agreement is a reference to a clause of, and a party, schedule or annexure to this Agreement and a reference to this Agreement includes any schedule or annexure.

2. OFFERS TO RENT

- 2.1 You offer to rent from us the Equipment specified in the online Order for the payments set out in that Order and on the terms of this Agreement until such time as that offer has been declined by us.
- 2.2 Upon (and subject to) us confirming the online Order via email, including any applicable Special Conditions, this Agreement will come into effect between you and us on the terms set out in the Order, in any annexed Schedule to the Order, and this Agreement.
- 2.3 In the event that we confirm the Order we will supply the Equipment specified in the Order on the terms set out in the Order and this Agreement.

3 ACCEPTANCE OF OFFERS

- 3.1 To assist us to consider whether to accept any offer made by you under clause 2, we may require you to provide such additional information and documents as we consider necessary.
- 3.2 We may accept or reject an offer to rent in our discretion, even if you provide all that we require under clause
- 3.3 We may impose conditions on our acceptance, and need not give reasons for our decision.
- 3.4 We may only accept an offer to rent by confirming the relevant Order by email and we are not bound until we provide that confirmation, even if you have prepaid any amount or taken delivery of the Equipment. You are bound to rent the Equipment from us once we confirm that Order.

4 AUTHORISED SIGNATORIES

- 4.1 You agree that each Authorised Signatory may do the following on your behalf:
 - (a) agree to any Special Conditions that we may require to supplement or vary this Agreement;
 - (b) make declarations or sign acknowledgments or other documents that we may require in relation to this Agreement or any transaction under this Agreement; and
 - (c) do anything else in relation to this Agreement or any transaction under this Agreement.

5 ASSIGNMENT

- 5.1 Subject only to your rights under this Agreement, we may assign, transfer or otherwise deal with the Equipment or all or any part of our rights and obligations under this Agreement without your consent. You must not assign, transfer or otherwise deal with any of your rights or obligations under this Agreement without our prior written consent.

6 PAYMENT OBLIGATIONS

- 6.1 You will be issued with a Tax Invoice for each Rental Payment. You must pay to us the Rental Payments at the times referred to in the Order.
- 6.2 You must pay or bear and indemnify us against all taxes, registration fees, other duties, fees and fiscal imposts payable in respect of this Agreement, any amounts payable under this Agreement and any transaction evidenced by this Agreement. Should the amount actually payable to the relevant authority for any such duties, fees or imposts differ from the amount (if any) disclosed in the Order, you must pay to us the amount of the deficiency upon demand.
- 6.3 You must reimburse us on demand for the amount of any GST payable on any supply made by us under or in connection with this Agreement (including, without limitation, any GST payable in connection with any residual or Early Termination Amount).
- 6.4 You must pay us any fees or charges that we may reasonably request:
- (a) to recover any transaction fees or costs incurred by us, including, but not limited to, any costs incurred in seeking to recover any payments owed by you to us;
 - (b) for the provision of information;
 - (c) for acting on the assignment or variation of this Agreement;
 - (d) as a result of you not paying us in the way required under clause 6.5; or
 - (e) to recover any losses arising from and any costs incurred in connection with any action taken by us under or in relation to the PPSA, including any registration, or any response to a change demand or a request under section 177 of the PPSA, or any search of the PPS Register.
- 6.5 You must pay all payments under this Agreement by way of direct debit per the Direct Debit Request form as part of the online Order or in such other form or manner as we may from time to time direct or agree in writing.
- 6.6 Subject to clause 6.5, all payments by you must be paid on demand. If a date for payment:
- (a) is not a Business Day, payment must be made on the following Business Day; or
 - (b) falls on a day not contained in a month, the payment must be made on the last day of that month.
- 6.7 Your obligation to pay the Rental Payments is absolute and unconditional and (without limitation) will continue even if the Equipment breaks down, is 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.

7 ACKNOWLEDGMENTS

- 7.1 You acknowledge and agree:
- (a) you have satisfied yourself as to the condition and suitability of the Equipment for your purposes and the non-infringement of any patents or other applicable intellectual property rights and you have not relied on us in deciding to enter into this Agreement;
 - (b) you will, at your own cost, obtain delivery of the Equipment and arrange any installation and set-up of the Equipment and to the full extent permitted by applicable laws and other applicable laws, we will not be liable for any delay in that delivery or for any damage, defect or loss arising out of the installation or set-up of the Equipment. You will be taken to have received and accepted the Equipment in the condition in which it was delivered. If requested by us, you must execute an acknowledgment of delivery in a form acceptable to us;
 - (c) that the Equipment is supplied to you for business purposes in terms of sections 2 and 43 of the *Consumer Guarantees Act 1993* ("CGA"). Accordingly, and to the extent possible, the provisions of the CGA and the *Fair Trading Act 1986* are contracted out of or do not apply to the supply of the Equipment or services under this Agreement;
 - (d) we do not give any guarantee, representation, warranty or assurance, express or implied, as to the quality, merchantability, acceptability, and fitness for purpose of the Equipment;
 - (e) to the extent that applicable laws allow, we are not liable for:

- (i) any death of or injury to you or any other person; or
 - (ii) any damage to, or loss or destruction of, property belonging to you or anybody else, arising from or in connection with the possession, operation or use of the Equipment or its repair or maintenance; or
 - (iii) any indirect, consequential or economic loss or damage (including, without limitation, loss of profit, loss of revenue and loss of contract) arising under or in connection with this Agreement; and
- (f) in any event, our liability under or in relation to this Agreement or the Equipment, is limited, at our option, to one or more of the following:
- (i) in the case of goods supplied, to one or more of the following (as we determine): replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or
 - (ii) in the case of services supplied, to one or more of the following (as we determine): supplying the services again or paying the cost of having the services supplied again.

7.2 You must promptly, and in any event, within five (5) Business Days of a request, provide us with such documentation or other evidence as may be requested by us to enable us to carry out and be satisfied that there is compliance with all necessary "Know Your Customer" requirements or other similar checks under all applicable laws and regulations and our operating procedures.

8 USE AND CARE OF EQUIPMENT

8.1 You:

- (a) must ensure that the Equipment is used only in your general business operations and only for the purposes for which the Equipment was designed, by qualified personnel complying at all times with all laws relating to the Equipment and its use, with the Handling Procedures and with all instructions and recommendations issued by the Equipment's supplier or manufacturer and, if the law or we require the Equipment or this Agreement to be registered, you must attend to this and ensure that such registration remains effective at all times;
- (b) must ensure that no repairs, maintenance, or other work is carried out on the Equipment. In the event that Equipment requires repairs, maintenance, or other work, you must return the Equipment to us at your own cost. We will determine in our sole discretion whether the Equipment is faulty and whether to repair or replace the Equipment;
- (c) where the Equipment includes kegs or other barrels used for the purposes of storing, transporting and serving Beverages:
 - (i) must ensure that such Equipment is filled with Beverages only and no other liquids, unless otherwise agreed in writing by us;
 - (ii) must ensure that such Equipment is cleaned after every use in accordance with generally accepted cleaning methods using semi or fully automatic keg cleaning or processing equipment approved by us. You must also ensure that such Equipment is not cleaned by removing the valve; and
 - (iii) must not allow any foreign matter such as (without limitation) bags containing flavour chips or adjuncts of particles of solid matter to be placed or deposited in the Equipment;
- (d) irrevocably authorise, and must use your best endeavours to have others authorise, us to enter upon any premises where we reasonably believe the Equipment is located to examine the Equipment's state of repair and operation;
- (e) must provide us access to the Equipment at any time to enable us to affix identifying plates or marks on the Equipment, and you must not place, or allow to be placed, on any Equipment any plates, words, markings or numbers that are inconsistent with our PPS Security Interest in the Equipment or under this Agreement. If we request, you must affix to the Equipment a readily visible plate or sign that brings the existence of our PPS Security Interest in the Equipment or under this Agreement to the attention of other persons and states that a disposal of the Equipment or the granting of a Security Interest over the Equipment which is not otherwise permitted under this Agreement will breach this Agreement. You must not remove or change, or allow any person to remove or change, that plate or sign unless we agree;

- (f) agree that any replacement of, alteration or addition to any accessories, tools or other equipment or goods supplied with, installed in, or attached to, the Equipment during the Term will become our property and will be considered part of the Equipment for the purposes of this Agreement. You must ensure that they are free of any Security Interests (other than PPS Security Interests in our favour) before they are installed on or attached to the Equipment;
 - (g) must not sell, hire, dispose, sublet or create or permit to subsist any Security Interest (that is not in our favour) in, the Equipment or any interest in the Equipment, or agree or attempt to do so or authorise any person to do so, without our prior written consent;
 - (h) have no authority to pledge our credit or create any Security Interest or right in, or over, the Equipment to or in favour of any person other than us and you must notify all third parties of this provision before they work on the Equipment;
 - (i) must not use or install the Equipment in any manner that would lead to the Equipment becoming a fixture to land; and
 - (j) must comply with all applicable laws relating to the Equipment and its use, including, without limitation, environmental and occupational health and safety laws.
- 8.2 You acknowledge that if you dispose of or otherwise deal with the Equipment or an interest in them in breach of clause 8.1(g) above, we have not authorised the disposal or agreed that the dealing would extinguish our interest (including any PPS Security Interest), and that our interest (including any PPS Security Interest) continues in the Equipment or under this Agreement, despite the disposal or dealing.

9 OTHER OBLIGATIONS

- 9.1 You acknowledge and agree that this Agreement constitutes a security agreement for the purposes of section 36 of the PPSA which is registrable on the PPS Register.
- 9.2 You grant us a continuing security interest in the Equipment and all your present and future rights in relation to that Equipment and all proceeds, as security for the lease and payment of all amounts you owe to us and the performance of your obligations under this Agreement.
- 9.3 You must (at your sole expense):
- (a) properly execute any documents, do or cause to be done anything else which we consider necessary or desirable to perfect and protect any PPS Security Interest in the Equipment and any subsequent proceeds and provided for by this Agreement;
 - (b) provide us with all information we need in order to ensure that any registration of any PPS Security Interest provided for by this Agreement is, and remains, fully effective and with the priority that we require;
 - (c) indemnify, and upon demand reimburse, us for all expenses incurred in registering a financing statement or financing change statement on the PPS Register or discharging any PPS security interest; and
 - (d) not register a financing change statement or a change demand on the PPS Register without our prior written consent.
- 9.4 You agree that we may register a financing statement to protect our PPS Security Interest, and that you represent and warrant that you have not had any other name in the last five (5) years other than your name in this Agreement (except as notified to us) and you agree not to change your name or other details without first giving us at least thirty (30) Business Days' notice in writing of your proposed new name or details.
- 9.5 You declare that you have provided us with the serial numbers that we would require to make an effective registration (with the priority required by us) against all Serial Numbered Property in accordance with the PPSA. You must notify us immediately in writing if a new or different serial number is allocated to any Serial Numbered Property and you must not change or remove the serial number of any Serial Numbered Property after you have disclosed the number to us.
- 9.6 You agree:
- (a) that nothing in sections 114(1)(a), 120(1), 122, 133 and 134 of the PPSA will apply to this Agreement or our PPS Security Interest;
 - (b) to waive all your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and
 - (c) to waive your right to receive a copy of the verifications statement under the PPSA.

9.7 Nothing in this Agreement will be construed as:

- (a) an agreement to subordinate the PPS Security Interest or the charge under this Agreement in favour of any person; or
- (b) a consent by us to any other PPS Security Interest attaching to (as "attach" is used in the context of the PPSA), or any other security subsisting over, any Equipment.

10 INSURANCE

10.1 You must, at your own cost, effect and keep current throughout the Term with a reputable and solvent insurer:

- (a) insurance in respect of the Equipment for its full insurable value against all loss or damage of any kind whatever and however caused;
- (b) insurance for such amount of cover as is reasonably required by us (or if not specifically required by us, for such amount as a prudent owner of the Equipment would obtain cover) having regard to the nature and intended use of the Equipment, against any loss, damage or injury of any kind whatever and however caused to any person or property arising out of the Equipment or its possession, operation or use, under a policy covering all such risks, including claims by third parties; and
- (c) insurance against any other loss, damage, injury or risk which we may reasonably require from time to time.

10.2 You must ensure that our interest as owner of the Equipment is noted on all such insurances and you must produce to us on demand proof of its currency and you must ensure nothing is done or occurs which might prejudice or invalidate those insurances.

10.3 If you fail to comply with clause 10.1(a), we may in our discretion, at any time, effect any insurances in our own name and on our own behalf, in which case you must reimburse us on demand for that cost.

10.4 We are entitled to receive all amounts payable under any relevant insurance policy or by any other person in respect of damage to, or loss of, the Equipment and you irrevocably appoint us and each of our authorised representatives, as your attorney to recover or compromise in our respective names any claim, loss or damage under any such insurances and to give effectual releases and receipts. You also irrevocably authorise us to appropriate any insurance or other amounts received in respect of any loss of or damage to the Equipment towards any debt or liability, present or future, actual or contingent of yours or, in our discretion, to repairing such damage or replacing the Equipment. To the extent that those insurance proceeds may be insufficient to effect such repairs, you must apply your own moneys for this purpose.

11 LOSS OF OR DAMAGE TO EQUIPMENT

11.1 If the Equipment or any item or items of the Equipment (the "Affected Equipment") are lost, stolen or damaged beyond economic repair, you must immediately notify us and within five (5) Business Days of such notification, you must pay to us:

- (a) the amount which we notify you is the Early Termination Amount referable to the Affected Equipment that would have been payable had the rental to you of the Affected Equipment terminated under clause 14.1, calculated as at the date of our notification to you; plus
- (b) the Residual Value of the Affected Equipment being $C \times (1 - (Y \times D))$, where:

C = \$150.00 NZD excluding GST

Y = Period in years, including parts thereof, from the Commencement Date to the date of our notification to you

D = Depreciation which is 6.67% per annum

11.2 If you make payment in accordance with clause 11.1, then, upon our receipt of the amount payable by you under clause 11.1 in respect of the Affected Equipment:

- (a) the renting to you of the Affected Equipment shall terminate;
- (b) the renting of any remaining item or items of the Equipment will continue with new Rental Payments applying as from the next due date for a Rental Payment, being the Rental Payments

- otherwise payable less the proportion of the Rental Payments which we calculate was payable in respect of the Affected Equipment; and
- (c) we will make a pro-rata adjustment to any Rental Payments already paid in respect of the Affected Equipment for the period from receipt of the payment referred to in clause 11.1 to the next date on which a Rental Payment falls due.
- 11.3. If we receive any insurance proceeds in respect of the Affected Equipment where clause 11.1 applies, such proceeds (net of GST) will be credited to you to the extent of the payment received from you under clause 11.1(a).

12 TITLE TO EQUIPMENT

- 12.1 You acknowledge that the Equipment remains the property of us at all times and that your rights under this Agreement are personal and as bailee only, and that you have no authority to deal with, and agree not to purport to deal with, or share or transfer ownership of, the Equipment.
- 12.2 Upon delivery and possession, the risk of loss or damage to the Equipment will lie with you, irrespective that the title to the Equipment remains with us. You are responsible for the custody and safekeeping of the Equipment from the time of delivery.
- 12.3 You must do everything necessary to protect our title to and PPS Security Interest in the Equipment or under this Agreement, including advising third parties of our ownership of and PPS Security Interest in the Equipment or under this Agreement. You must refrain from doing anything which could give rise to any claim adverse to our ownership of and PPS Security Interest in the Equipment or under this Agreement. You must notify us immediately if a third party makes any such claim.
- 12.4 If we become entitled to repossess the Equipment, you irrevocably authorise us to enter upon any land or premises where we reasonably believe the Equipment is located, and remove the Equipment.

13 INDEMNITIES

- 13.1 You indemnify us and our officers, agents and employees against all loss (including, without limitation, any loss of Rental Payments, residual or other revenue or capital loss or any loss of bargain or profit), damage, claims, liabilities, costs, taxes, charges and expenses (including legal expenses on a full indemnity basis) of whatever kind or nature ("**Loss**"), arising directly or indirectly from, or in respect of:
- (a) the delivery, installation, use or change of use, location, relocation, condition, operation, seizure, forfeiture or other confiscation of the Equipment, or the loss, destruction, theft or damage of the Equipment howsoever caused including loss of value resulting from insufficient, inadequate or faulty repair;
- (b) any claim or demand from any third party in relation to the Equipment or its possession, operation or use;
- (c) any damage to property or death of, or injury to, any person suffered or sustained in connection with the Equipment or its possession, operation or use;
- (d) any failure by you to observe your obligations under this Agreement or arising from any untrue or misleading representation, warranty or statement (including on tax matters) made by you in, or in connection with, this Agreement;
- (e) any steps taken by us to administer, exercise, enforce or preserve any of our rights under this Agreement;
- (f) any loss, reduction or disallowance of any depreciation allowance upon which we have relied in calculating the Rental Payments payable under this Agreement;
- (g) any new legislation or change in any legislation (including government revenue raising legislation) or subordinate legislation, or any change in any ruling, guideline, directive or requirement (including, without limitation, capital adequacy requirements) issued by any government authority or body or any change in the interpretation of any such legislation, subordinate legislation, ruling, guideline, directive or requirement that affects this Agreement, the transactions evidenced by this Agreement, our obligations under this Agreement or our return under this Agreement;
- (h) the early termination of this Agreement (to the extent not otherwise recoverable under this Agreement); or
- (i) any Security Interest contemplated by this Agreement not having its intended priority required by us, failing to attach to the Equipment, not being perfected, being void, illegal, invalid,

unenforceable or of limited force and effect, except to the extent arising directly from our negligence or our breach of this Agreement.

- 13.2 Except to the extent arising directly from our negligence or our breach of this Agreement, you release us, to the full extent permitted by law, from all claims and demands of every kind arising out of the delivery, installation, location, possession, operation or use of the Equipment, including any liability which may arise in respect of any accident or damage to property or death of, or injury to, you or any other person of whatever nature or kind or arising out of any steps taken by us to exercise, enforce or preserve our rights under this Agreement.
- 13.3 The indemnities and releases set out in this Agreement continue in full force and effect notwithstanding the termination (however occurring) of this Agreement.

14 EARLY TERMINATION

- 14.1 We may terminate this Agreement and repossess the Equipment (which repossession will itself terminate this Agreement if no prior notice of termination is given) if any of the following events occur:
- (a) **failure to pay Rental Payment:** you fail to pay a Rental Payment when due; or
 - (b) **repudiation:** you breach any other essential provision of this Agreement or otherwise repudiate your obligations under this Agreement; or
 - (c) **non-compliance with rectification notice:** you fail to observe any other obligation under this Agreement after first being given written notice by us requiring such failure to be rectified within a period of at least ten (10) Business Days after service of the notice, that notice being deemed to stipulate the time for rectification to be of the essence; or
 - (d) **misrepresentation:** we ascertain that any representation, warranty or statement made by you in, or in connection with, this Agreement is untrue or misleading (whether by omission or otherwise) in any material respect; or
 - (e) **material change:** there is, in our reasonable opinion, a material adverse change in your business, assets or financial condition or a change in your ownership without our prior written consent; or
 - (f) **insolvency:** you enter into, or any steps are taken to have you enter into, liquidation, provisional liquidation, receivership and/or management, administration, bankruptcy or any arrangement, reconstruction or composition with your creditors or any of them, or a receiver is appointed with respect to any of your assets or you fail to pay your debts as they fall due or you otherwise become insolvent;
 - (g) **insurance:** any insurance required under this Agreement is cancelled or any insurer disclaims liability, or we receive notice that any such insurance will be cancelled or materially adversely modified and a fresh policy is not effected to our satisfaction before expiration of the notice; or
 - (h) **cross-default:** you fail, or a related body corporate of yours fails, to comply with that person's or entity's obligations under any leasing, borrowing, hiring or other finance agreement or arrangement with us or any of our related bodies corporate, or under any guarantee, indemnity or undertaking given to us or any related body corporate of ours; or
 - (i) **jeopardy:** we ascertain in our reasonable opinion that there is a serious risk of loss of or damage to the Equipment for any reason.
- 14.2 Without limiting the essentiality of any other term of this Agreement, your obligation to pay the Rental Payments on time, to maintain and insure the Equipment, to comply with clause 8.1(c), to comply with clause 8.1(f), to remain solvent and to ensure that there is no change of the type referred to in clause 14.1(e), are essential terms of this Agreement. You will be taken to have repudiated your obligations under this Agreement if you do not comply with any of the essential terms of this Agreement.
- 14.3 If we terminate this Agreement under clause 14.1, you must:
- (a) immediately on receiving notice of termination, deliver up the Equipment in accordance with clause 15.1(a);
 - (b) pay to us on demand the Early Termination Amount; and
 - (c) pay to us on demand our Costs of Repossession.
- 14.4 If an event referred to in clause 14.1 occurs entitling us to terminate this Agreement, then the occurrence of such event shall:
- (a) constitute an event of default under; and
 - (b) be taken to be a repudiation of your obligations under,

any other leasing, borrowing, hiring or other finance agreement or arrangement with us or any of our related bodies corporate, thereby entitling us (or our related body corporate, as the case may be) to terminate that leasing, borrowing, hiring or other finance agreement or arrangement.

15 TERMINATION ON EXPIRY

- 15.1 On the expiry or earlier termination of this Agreement, you must:
- (a) at your cost, immediately deliver up the Equipment in good working order and condition (Fair Wear and Tear excepted), in accordance with the manufacturer's specifications to us at a location specified by us, together with such records regarding the Equipment as are required by us, and if you do not do so, we may repossess the Equipment. If Equipment is returned to us with damage beyond Fair Wear and Tear, in addition to any other amount payable under or in connection with this Agreement, you will be liable to compensate us for any damage to the Equipment beyond normal Fair Wear and Tear;
 - (b) pay to us on demand, by way of liquidated damages, an amount equal to the average daily Rental Payment payable by you during the Term, for each day you fail to deliver up the Equipment in accordance with clause 15.1(a) or until we retake possession of the Equipment (to the extent that rent is not otherwise payable during that period under the following provisions of this clause 15);
 - (c) pay to us on demand our Costs of Repossession; and
 - (d) pay to us on demand all other amounts which fell due prior to termination and which remain outstanding and any other amounts payable under this Agreement.
- 15.2 If you do not return the Equipment to us in the manner and condition required under clause 15.1(a) by the end of the Calendar Month during which the expiration of the Term occurs and we have not terminated this Agreement, then the term of this Agreement shall be automatically extended for a further 12 months, and shall continue to be automatically extended for 12 month periods (each 12 month period a "**Further Term**") until:
- (a) we demand the return of the Equipment and you deliver the Equipment to us in the manner and condition required under clause 15.1(a); or
 - (b) you:
 - i. give us written notice that you wish to terminate no later than three (3) months' before the end of the Further Term; and
 - ii. deliver the Equipment to us at the expiry of the Further Term in the manner and condition required under clause 15.1(a).
- During any such Further Term, your rental of the Equipment will continue at the same periodic rental and otherwise on the same terms and conditions as set out in this Agreement.
- 15.3 Payment of additional Rental Payments by you under clause 15.2 will not affect our ownership of the Equipment or any of our rights under this Agreement.

16 GENERAL PROVISIONS

- 16.1 **Rights** Termination of this Agreement, however arising, will be without prejudice to our rights, powers and remedies with respect to any antecedent breach by you under this Agreement. All of our rights under this Agreement are in addition to our rights under the general law.
- 16.2 **Evidence** A certificate signed by any officer or manager of ours containing statements as to an amount due by you under this Agreement, the occurrence of any event or the existence of any fact, will be sufficient evidence of that fact or occurrence unless you prove them to be false.
- 16.3 **Financial Information** You must provide us with any financial or other information relating to the financial condition, business, assets and affairs of you and any of your related bodies corporate as and when requested by us.
- 16.4 **Force Majeure** If during the term of this Agreement the Equipment (including any replacement Equipment provided) is destroyed or damaged by fire, earthquake or accident such that the Equipment is beyond repair without fault of you or us, we may at our option either provide replacement Equipment (in which case you will only be liable for Rental Payments in respect of that Equipment and not the original Equipment) or by notice in writing immediately terminate this Agreement.

- 16.5 **Notices** Any notice or demand to be given by a party under this Agreement may be served on any other party by being left at or sent by pre-paid mail to that other party's address set out in the Order or otherwise as notified in writing by that other party for the purposes of this Agreement. The notice or demand will be treated as having been given and received:
- (a) if delivered, on the day of delivery; or
 - (b) if sent by pre-paid mail, on the second Business Day after posting; or
 - (c) if transmitted by email, on the date and time at which the email enters the addressee's information system (as shown by a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the correct email address of the addressee).
- 16.6 **Overdue Interest** You must pay to us on demand interest on any amounts due but unpaid under this Agreement at the rate (as advised by us) which is 2% above the Discount Rate, calculated on a daily basis from the date the relevant amount became due to the date of payment by you and compounded monthly. If a liability under this Agreement becomes merged in a judgement or order or exists after your winding up, you, as an independent obligation, must pay interest on the amount of that liability from the date the liability becomes payable both before and after the judgement, order or winding up until it is paid, also at that rate.
- 16.7 **No Waiver** No waiver or indulgence by us in relation to any breach of this Agreement by you will be deemed a waiver of any continuing or recurring breach.
- 16.8 **We May Act on Your Omissions** If you neglect to pay any amount or take any other action required by this Agreement, we may pay that amount or take that other action and recover the costs from you. We may enter and remain upon any land or premises of yours for this purpose.
- 16.9 **Set-Off** You irrevocably authorise us to set off without notice any amount held by us on any account of yours against any amount owing by you to us or any of our related bodies corporate. You must not exercise any right of set-off on any account.
- 16.10 **Governing** This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 16.11 **Sever Invalid Provisions** If any provision of this Agreement is found to be invalid or unenforceable in any jurisdiction, it will have no force or effect in that jurisdiction and will be severed from this Agreement in that jurisdiction without affecting the remaining provisions and without affecting the operation of this Agreement in any other jurisdiction.
- 16.12 **Conditions of Consent** We may or may not grant any consent or approval under this Agreement in our absolute discretion and upon such conditions as we may determine.
- 16.13 **Agency** We may enter into this Agreement and acquire the Equipment as agent for another person (whether disclosed or not).
- 16.14 **Authority to Sign** Where this Agreement is entered into by a person on your behalf, that person represents and warrants that he or she has the authority and delegated power to execute this Agreement on your behalf.
- 16.15 **Your Warranties** You represent and warrant that:
- (a) you have full authority and all necessary consents to enter into and perform your obligations under this Agreement;
 - (b) this Agreement and all other agreements contemplated by this Agreement will, when executed by you, constitute binding obligations of you in accordance with their respective terms;
 - (c) the execution, delivery and performance by you of this Agreement will not:
 - (i) result in a breach of, or constitute a default under, any instrument to which you are a party or by which you are bound and which is material in the context of the transactions contemplated by this Agreement;
 - (ii) violate any law; or
 - (iii) result in a breach of any order, judgment or decree of any court or governmental authority to which you are a party or by which you are bound and which is material in the context of the transactions contemplated by this Agreement; and
 - (d) you have disclosed to us all the information that is material to an assessment by us of the risks that we assume by entering into this Agreement.