

Lease Agreement Terms and Conditions

PART A APPLIES TO BOTH MINILEASE™ AND MINILEASE PROTECT™

PART B APPLIES ONLY TO MINILEASE™

PART C APPLIES ONLY TO MINILEASE PROTECT™

This Lease Agreement is between you and Flexirent Capital Pty Ltd.

PART A - GENERAL TERMS AND CONDITIONS

1. OWNERSHIP OF EQUIPMENT

- (a) We are the owner of the Equipment. You only have the right to use it.
- (b) For the purposes of this Lease Agreement, Equipment includes hardware and software.
- (c) You must protect our ownership of the Equipment and not attempt to sell, hire or deal with it in any way.

2. ENTIRE AGREEMENT

- (a) The entire Lease Agreement between you and us consists of these terms and conditions, the Signature Page and the Direct Debit Request.
- (b) This Lease Agreement cannot be cancelled or terminated except in accordance with its terms.
- (c) Any brochures and marketing material you may have seen are provided for your information only and do not form part of this Lease Agreement.

3. DISCLAIMER OF WARRANTIES

- (a) Upon delivery of the Equipment you must inspect it and satisfy yourself that it is in good operating order and condition.
- (b) You must rely on your own judgment as to:
 - (i) the quality and condition of the Equipment and its fitness and suitability for any particular purpose; and
 - (ii) the performance of services provided by third parties.
- (c) No warranties are given in relation to the Equipment or any services other than those implied by law.
- (d) To the extent permitted by law, damages for breach of warranties implied by law are limited to repair or replacement of the Equipment or the re-supply of the services.
- (e) We exclude all liability for indirect or consequential damage, loss of income, loss of profit or interruption of business.
- (f) No salesman or agent of the seller of the Equipment is authorised to change any term of this Lease Agreement or to make any warranties or representations about it, oral or otherwise.

4. CORRECTION OF ERRORS

You authorise us to complete any blanks or correct any errors in this Lease Agreement (including inserting serial numbers, model numbers, the Start Date, Payment Date and Contract Number).

5. PAYMENTS

- (a) You must pay to us the Total Monthly Lease Payment shown on the Signature Page each month for the full Agreed Term.
- (b) Payments are due monthly in advance on the Payment Date shown on the Signature Page.
- (c) If the Payment Date falls on a weekend or public holiday, payment is due on the next business day.
- (d) Unless we otherwise agree, all payments must be made by direct debit from your bank account or credit card.
- (e) All payments, once paid, are not refundable for any reason.
- (f) If there is any change to the amount of Stamp Duty or GST payable or if any other taxes or government charges become payable in respect of this Lease Agreement, you agree that we may adjust the Total Monthly Lease Payment accordingly.
- (g) You are unconditionally bound to pay all amounts due under this Lease Agreement in full without set-off or counterclaim, and without any deduction in respect of taxes, unless prohibited by law, on any account whatsoever. This obligation continues no matter what happens, even if the Equipment is lost, stolen, damaged or destroyed, if it is defective or if you can no longer use it.

6. USE AND MAINTENANCE OF EQUIPMENT

- (a) You must keep the Equipment in good repair, condition and working order, normal fair wear and tear excepted, and must supply all parts and servicing required.
- (b) You must use, service and maintain the Equipment in accordance with the manufacturer's instructions and recommendations.
- (c) You may modify the Equipment only with our consent.

7. LOCATION AND INSPECTION

- (a) Other than portable equipment, you must not move the Equipment from its location noted on the Signature Page without our prior written consent.
- (b) You agree to provide our authorised agents and us with reasonable access to inspect the Equipment to confirm its existence, condition and proper maintenance.
- (c) If you fail to provide access to us and/or our authorised agents, we have the right, subject to compliance with any applicable law, to enter the premises, or authorise our agents to enter the premises, where we believe the Equipment is located in order to confirm its existence, condition and proper maintenance.

8. LATE PAYMENTS

- (a) If a Total Monthly Lease Payment or any other amount due is not paid in full on time, you are in default and we are entitled to recover liquidated damages on the overdue amount which you agree is a genuine pre-estimate of the actual loss that we will suffer as a result of you being late in any payment to us.
- (b) For each failure to make a payment in full and on time, the amount of liquidated damages payable will be the greater of \$25 or 0.05% per day on the overdue amount until paid in full.
- (c) In addition, you agree to reimburse us for the amount that our bankers charge us for your dishonoured payment(s).
- (d) All liquidated damages are payable on demand which we may demand by debiting the amount of any liquidated damages from your nominated bank account or credit card on any date at our election without notice to you.
- (e) Upon and after termination of this Lease Agreement, as a separate and independent obligation which survives termination of this Lease Agreement, you agree to pay liquidated damages at the rate of 0.05% per day on the overdue amount, capitalised monthly, until all amounts owing under this Lease Agreement are paid in full.

9. DEFAULT

You will be considered to be in default and to have repudiated this Lease Agreement if you:

- (a) do not pay in full any Total Monthly Lease Payment or any other amounts due in accordance with clause 5;
- (b) fail to insure the Equipment if you are required to do so under clause 30;
- (c) become insolvent, bankrupt or become subject to any arrangement or composition, or as a company or business you enter administration, receivership, liquidation or external administration; or
- (d) sell, dispose or encumber the Equipment or attempt to do any of those things.

10. TERMINATION

This Lease Agreement will terminate upon the occurrence of any of the following events:

- (a) we give you notice terminating this Lease Agreement after your default and repudiation of this Lease Agreement;

- (b) you return the Equipment to us at any time prior to the expiry of the Agreed Term if you have a right to do so under the Consumer Credit Code; or
- (c) we sell any Equipment repossessed under clause 13.

11. CONSEQUENCES OF EARLY TERMINATION

If this Lease Agreement is terminated under clause 10, you must immediately:

- (a) pay to us:
 - (i) all overdue Total Monthly Lease Payments; plus
 - (ii) the present value of all remaining Total Monthly Lease Payments for the balance of the Agreed Term discounted at monthly rests at the Reserve Bank of Australia's cash rate current on the date this Lease Agreement is terminated; plus
 - (iii) the present value of the Residual Amount discounted at monthly rests at the Reserve Bank of Australia's cash rate current on the date this Lease Agreement is terminated; plus
 - (iv) any liquidated damages payable under clause 8 and any other amounts payable under this Lease Agreement, which amount you agree is a genuine pre-estimate of the loss that we will suffer because of the early termination of this Lease Agreement; and
- (b) return the Equipment to us in accordance with clause 12 if you have not previously done so.

12. RETURN OF EQUIPMENT

- (a) On termination of this Lease Agreement, you must return the Equipment at your expense to a place within Australia that we nominate, together with all software specified in the Signature Page, all CDs, DVDs, accessories and manuals, in as good condition as the Equipment was delivered to you, except for normal fair wear and tear.
- (b) It is your responsibility to remove any personal data and software not specified in the Signature Page that is stored on or in the Equipment before returning it to us.
- (c) We expressly deny all liability for any consequences arising from your failure to remove such information.
- (d) If any Equipment is returned to us other than in accordance with paragraph (b), you must pay to us, calculated at our standard rates, for our services required to remove any personal data in accordance with paragraph (b).

13. REPOSSESSION OF EQUIPMENT

- (a) If you fail to pay any Total Monthly Lease Payment or if you fail to return the Equipment when you are required to do so under this Lease Agreement, in addition to our other rights, we or our authorised agents may, subject to complying with any applicable law, enter any premises where we believe the Equipment may be located and repossess the Equipment.
- (b) Subject to complying with any applicable law, we may sell any repossessed Equipment at any time.
- (c) If we have not terminated this Lease Agreement, you may collect the Equipment from us only if you have paid all amounts payable under this Lease Agreement (including any amounts owing under clause 16(a)).
- (d) We may sell any Equipment we repossess at any time after this Lease Agreement is terminated. The Net Sale Proceeds (being the actual amount received by us from the sale of the Equipment less all costs incurred by us in selling the Equipment, including agents fees or commissions, storage costs, transport costs and our administration costs) will be applied towards the Termination Amount and all other amounts payable by you under this Lease Agreement or any other agreement between us or will be paid to you if you have previously paid all amounts due to us under this Lease Agreement or any other agreement between us.

14. END OF TERM

- (a) At any time not earlier than 6 months prior to the expiry of the Agreed Term, you may offer to purchase the Equipment at the expiry of the Agreed Term at any price you see fit. You acknowledge that we are free to accept or reject your offer. If we accept your offer, GST will apply to the agreed purchase price.
- (b) At the expiry of the Agreed Term, you must either:
 - (i) pay to us the purchase price for the Equipment in accordance with any agreement made under clause 14(a), which amount we may debit from your nominated bank account or credit card; or

- (ii) return the Equipment to us in the condition required under clause 12(a) and (b).

- (c) If you fail to comply with clause 14(b)(ii), you must pay to us on demand liquidated damages equal to the Residual Amount, which you agree is a genuine pre-estimate of the actual loss that we will suffer as a result of your failure to return the Equipment to us in accordance with clause 14(b)(ii), which amount we may demand by debiting it from your nominated bank account or credit card on any date at our election without notice to you.
- (d) If you return the Equipment to us and the Net Sale Proceeds (see clause 13(d) above) we receive are less than the Residual Amount, then you must pay us on demand the amount equal to the excess of the Residual Amount over the Net Sale Proceeds.
- (e) Notwithstanding anything contained in this Lease Agreement you have no right or obligation at any time to purchase the Equipment.

15. ASSIGNMENTS

- (a) You acknowledge that we may, without giving you notice, sell, assign or otherwise dispose of or deal with our interest in the Equipment or this Lease Agreement.
- (b) You may apply to assign this Lease Agreement but you acknowledge that we are not obliged to agree. We may charge a fee to credit assess the proposed assignee even if the proposed assignee is declined.

16. COSTS, INDEMNITIES AND COMMISSIONS

- (a) You must pay or reimburse us for:
 - (i) all taxes (including GST) and stamp duties payable in connection with this Lease Agreement; and
 - (ii) any expenses we reasonably incur in enforcing this Lease Agreement or incur because you have repudiated, terminated or breached this Lease Agreement, including, without limitation, any legal costs and expenses, financing break costs, costs incurred in repossessing or attempting to repossess the Equipment and costs incurred in storing and disposing of the Equipment.
- (b) You must indemnify us for:
 - (i) liability for any injury or death to any person or damage to any property arising directly or indirectly from the Equipment or its use, and
 - (ii) a claim for patent, trademark or copyright infringement, for strict liability or for any other reason being made against us in connection with the Equipment or its operation.
- (c) You agree that we may pay commissions or fees to any broker, agent, dealer or other person who introduces you to us, or us to you.

17. PRIVACY

- (a) We comply with the National Privacy Principles, the Code of Conduct for Credit Reporting and the Privacy Act (Cth) 1988. Terms used in this clause have the meaning given in the Privacy Act. In this clause "you" includes any guarantor.
- (b) You have a right to request access to the personal information that we hold about you. Contact our Privacy Officer for more information.
- (c) Subject to the payment of any applicable fee, we agree to provide you access to, or with a copy of, the personal information that we hold about you. We can only deny access to you in accordance with National Privacy Principle 6.
- (d) You agree to us collecting personal information about you for the purposes of:
 - (i) assessing existing or future application(s) for consumer or commercial credit, managing your account, responding to your questions, enforcing our rights, performing our obligations and protecting our assets;
 - (ii) either us, the supplier of the Equipment or any other supplier appointed by us contacting you about your end of Lease term options, any trade up options or other special offers or promotions;
 - (iii) providing you with information about our other products and services and the products and services offered by our dealers or suppliers; and
 - (iv) any guarantee given or to be given by you or any guarantee given or to be given by any other person as your guarantor and the enforcement of any guarantee.

- (e) We collect your personal information primarily from you. You agree that we may also collect personal information about you from the supplier of the Equipment; other credit providers; insurers; any of your employers, former employers, referees, banks, landlords, guarantors, accountants, lawyers and financial advisers; service providers to us (including debt collection agencies, introducers, private investigators, professional advisers); professional organisations; the internet; public and subscriber only databases; and government authorities.
- (f) You agree that we can obtain from credit reporting agencies and/or any business providing information about commercial credit worthiness:
 - (i) consumer credit report(s) about you for application(s) for commercial credit; and
 - (ii) commercial credit report(s) about you for application(s) for consumer credit.
- (g) You agree that we can disclose your personal information to:
 - (i) any person as permitted or required by law;
 - (ii) any of our related bodies corporate; our assignees or potential assignees; the supplier of the Equipment; any other supplier appointed by us, credit reporting agencies or any business providing information about commercial credit worthiness; other credit providers; insurers; any guarantor or proposed guarantor of your obligations to us; your assignees or proposed assignees; debt collection agencies; our banks and financial advisers; our lawyers, accountants and other professional advisers; and any suppliers or contractors to us whom may need to have access to your personal information to provide services to us or you (including, without limitation, valuers, physical and electronic file storage suppliers, receivables management suppliers and data warehouse); and
 - (iii) any person specifically authorised by you in writing to obtain your personal information from us.
- (h) You agree that the main consequence for you if you do not provide to us the personal information that we require, is that any application for credit is unlikely to be approved.

18. SEVERABILITY IF:

- (a) the Consumer Credit Code ("Code") or any other law would otherwise make a provision of this Lease Agreement illegal, void or unenforceable in any jurisdiction; or
- (b) a provision of this Lease Agreement would otherwise contravene a requirement of the Code or impose an obligation or liability which is prohibited by the Code or any other law, this Lease Agreement is to be read as if that provision were varied to the extent necessary to comply with the Code or that other law or, if necessary, omitted, without affecting the continued operation of the rest of this Lease Agreement in that jurisdiction or any other jurisdiction.

19. NOTICES

- (a) You must tell us if you change your bank account or credit card details, your business, postal or email address, or if you think there is any information that we should be aware of about your ability to comply with this Lease Agreement.
- (b) We can give you notice by delivering it to you personally or leaving it at, or sending it by post, facsimile or email to your home, business, postal or email address last known to us. An email notice shall be valid if not returned.
- (c) A certificate signed by one of our authorised officers is adequate proof of the facts stated in it relating to this Lease Agreement and rights and obligations arising under it in the absence of manifest error.
- (d) You consent to us and our related bodies corporate sending commercial electronic messages to you.

20. CHANGES TO THESE TERMS AND CONDITIONS

- (a) We may change these Terms and Conditions at any time by giving you not less than 30 days notice.
- (b) Any change shall not affect the amount of the Total Monthly Lease Payment (except as permitted in accordance with clause 5(f)) and shall only apply to obligations arising after the expiry of the notice period.
- (c) This notice may also be given to you by an advertisement in one or more newspapers circulating in your State or Territory.

21. FEES

- (a) We reserve the right to charge fees for services we provide.
- (b) Fees will be charged at our standard rates applicable from time to time.

22. GOVERNING LAW

- (a) This Lease Agreement is governed by the laws of New South Wales.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

23. INTERPRETATION

Capitalised terms used in the Signature Page have the same meaning in these terms and conditions.

24. JOINT AND SEVERAL OBLIGATION

If there is more than one, "you" means each of you separately and all of you jointly.

DDR SERVICE AGREEMENT

25. DEBITING YOUR ACCOUNT

- (a) By signing the Direct Debit Request (DDR), you authorise us to debit funds from your nominated account for any amount payable under this Lease Agreement and any other agreement between you and us.
- (b) If any payment falls due on a non-business day, it will be debited from your nominated account on the following business day.
- (c) All enquiries should in the first instance be directed to us.
- (d) Your records and account details held by us will be kept confidential, except information required by our Financial Institution in the event of a claim or relating to an alleged incorrect or wrongful debit.

26. CHANGES

- (a) If you want to request a change to the drawing arrangements, please contact us at least 14 days prior to the next scheduled drawing date. You should contact us before contacting your Financial Institution.
- (b) These requests may include:
 - (i) deferring the drawing;
 - (ii) stopping an individual debit;
 - (iii) suspending the DDR; or
 - (iv) cancelling the DDR completely.
- (c) However, as we have relied on your agreement to honour the DDR, we would be unlikely to agree to a request to change it, unless you provide a reasonable proposal as to how you will make good your payment obligations under this Lease Agreement.

27. YOUR OBLIGATIONS

- (a) It is your responsibility to:
 - (i) ensure that your nominated account can accept direct debits as direct debits through BECS is not available on all accounts (your Financial Institution can confirm whether your account can accept direct debits);
 - (ii) check your nominated account details with your Financial Institution before completing the DDR;
 - (iii) ensure that there are sufficient cleared funds in the nominated account, by the due date, to allow for payment of the amounts payable; and
 - (iv) advise us if the nominated account is transferred or closed.
- (b) If your drawing is returned or dishonoured by your financial institution, you should contact us to make suitable arrangements to rectify the non-payment. If no contact is made, we reserve the right to redraw the non-payment plus any applicable liquidated damages and fees payable pursuant to this Lease Agreement at any time at our discretion.
- (c) You will be responsible for paying any varying charges including, but not limited to, taxes, liquidated damages payable pursuant to clause 8 of this Lease Agreement and any other fees and charges payable.

28. DISPUTES

- (a) If you believe that a drawing has been initiated incorrectly, contact us during business hours before contacting your financial institution.
- (b) If you do not receive a satisfactory response from us to your dispute, contact your Financial Institution who will respond to you with an answer to your claim:
 - (i) within 7 business days (for claims lodged within 12 months of the disputed drawing); or
 - (ii) within 30 days (for claims lodged more than 12 months after the disputed drawing).
- (c) You will receive a refund of the drawing amount if we cannot substantiate the reason for the drawing.

PART B - TERMS AND CONDITIONS THAT ONLY APPLY TO MINILEASE

29. LOSS OR DAMAGE

- (a) You assume and bear the risk of loss or damage to the Equipment. If the Equipment is lost or damaged you agree to replace or repair the Equipment at your cost, and to continue to pay the Total Monthly Lease Payments in accordance with clause 5.
- (b) You agree to indemnify us for any loss or damage to the Equipment.

30. INSURANCE

- (a) You must arrange and at all times keep the Equipment insured against loss and all other normally insured risks for its full replacement value during the Agreed Term.
- (b) You must ensure that we are named as an additional insured party and loss payee under the policy.
- (c) You must provide us with evidence that the Equipment is insured if we ask for it.
- (d) You must not do, or fail to do, anything which would allow the insurer to refuse or reduce a claim; nor can you enforce, conduct, settle or compromise any claim without our consent.
- (e) We are entitled to receive any amounts paid by an insurer. If you receive them, you hold them on trust for us.

PART C - TERMS AND CONDITIONS THAT ONLY APPLY TO MINILEASE PROTECT

31. RISK OF LOSS OR DAMAGE

- (a) Subject to clauses 32 and 33, while we own the Equipment we retain and bear the risk of theft, loss or accidental damage to the Equipment occurring anywhere in Australia or New Zealand or anywhere else in the world during a trip of not more than 28 days duration.
- (b) You assume and bear the risk of all theft, loss or damage to the Equipment which we do not retain and bear under paragraph (a).
- (c) If the Equipment is stolen, lost or accidentally damaged and the risk of that loss or damage is ours under this Lease Agreement, subject to your compliance with clause 33, we will discharge our obligations in accordance with clause 34.

32. EXCLUSIONS, ALLOCATION OF RISK AND INDEMNITY

- (a) Notwithstanding clause 31, we will not pay for, and you will assume and bear the risk of, any loss, theft or damage to any Equipment:
 - (i) which is not accidental loss or damage;
 - (ii) where at the time of the loss, theft or damage you are two or more Total Monthly Lease Payments in arrears;
 - (iii) which is covered by a manufacturer's warranty or any other extended warranty or would have been so covered had that warranty not been voided;
 - (iv) caused by mechanical and/or electrical breakdown of any kind, unless the breakdown occurs as a result of an external accident (e.g. power surge);
 - (v) arising from theft, misappropriation, fraudulent, intentional or dishonest acts, or malicious damage by you, your employees, your family, any person who has unrestricted access to the Equipment, or any person to whom you have lent the Equipment or otherwise permitted to use the Equipment;
 - (vi) arising from theft, attempted theft or loss:
 - (1) from unoccupied premises unless the theft or loss resulted directly from a violent and forcible entry to the premises;
 - (2) from an unoccupied vehicle unless the vehicle was locked and the Equipment was locked in a lockable compartment permanently affixed to the vehicle and the theft or loss resulted directly from a violent and forcible entry to the vehicle and the locked compartment;

- (3) from an unoccupied vehicle under any circumstances where the Equipment was stored or left overnight; or
 - (4) from any public place or any place where the public has regular access and where the Equipment was left unattended;
 - (vii) occurring during or as a result of the Equipment being transported in any aircraft or watercraft unless carried as cabin baggage;
 - (viii) that was on loan or being used for trial, testing, demonstration or exhibition;
 - (ix) where the loss or damage is to software or data of any type whatsoever or is caused by any computer virus, worm, Trojan or the like or any other software based malfunction;
 - (x) for the costs of data programming, data reconstruction, data recovery or program installation or reconfiguration;
 - (xi) resulting from:
 - (1) any consequence of war or warlike activities;
 - (2) ionizing radiation or radioactivity; or
 - (3) the confiscation or destruction of any Equipment by any government, public or statutory authority;
 - (xii) caused by corrosion, oxidation, rust, insects, vermin, dust, dampness, dryness, cold, heat, wasting, cosmetic damage, scratching or marring, faulty workmanship or materials, loss of screen or image brightness or resolution, failure to perform to specifications or wearing away or wearing out of any part of any Equipment which arises from normal fair wear and tear, ordinary use or gradual deterioration; or
 - (xiii) which are expendable or consumable items including fuses, batteries, bells, chains, tapes or ribbons or any other part of any Equipment which requires periodic or frequent replacement.
- (b) You agree to indemnify us for:
 - (i) any theft, loss or damage to the Equipment to which paragraphs (a)(i) to (a)(xiii) apply;
 - (ii) liability for any injury or death to any person or damage to any property arising directly or indirectly from the Equipment or its use; and
 - (iii) the first \$220 of any claim for loss or damage in respect of risks retained by us for our processing and administration costs.
 - (c) You are responsible for ensuring that all software and data is backed up.

33. INCIDENT NOTIFICATION

- (a) If any Equipment is stolen, you must promptly inform the police and promptly provide us with a copy of the police report.
- (b) Within 14 days after the loss or damage occurring, you must complete an Incident Notification form and send it to us.

34. BASIS OF SETTLEMENT

- (a) In our absolute discretion, we may:
 - (i) repair the damaged Equipment;
 - (ii) replace the stolen, lost or damaged Equipment with equipment of similar age, original specifications (excluding modifications) and condition, but this may not necessarily be the same make or model; or
 - (iii) choose to release you from your future obligations under this Lease Agreement except for any payments in arrears at the time the loss or damage claim is approved.
- (b) We reserve the right to choose any suitably qualified repairer to carry out repairs or any suitable supplier to replace the Equipment.
- (c) Unless we release you from your obligations under paragraph (a)(iii), you must continue to pay Total Monthly Lease Payments in accordance with clause 5.