

## Packserv Pty Ltd T/A Packserv Australia - Terms & Conditions of Hire

### 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Packserv" means Packserv Pty Ltd T/A Packserv Australia, its successors and assigns or any person acting on behalf of and with the authority of Packserv Pty Ltd T/A Packserv Australia.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Packserv to provide the services 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.
- 1.4 "Equipment" means all Equipment (including any accessories) supplied on hire by Packserv 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 Packserv to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Packserv to the Client.
- 1.6 "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.
- 1.7 "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.**
- 1.8 "Charges" means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between Packserv and the Client subject to clause 5 of this Contract.
- 1.9 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Delivery of, the Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the hire of Equipment on credit shall not take effect until the Client has completed a credit application with Packserv and it has been approved with a credit limit established for the account.
- 2.5 In the event that the hire of Equipment request exceeds the Client's credit limit and/or the account exceeds the payment terms, Packserv reserves the right to refuse Delivery.
- 2.6 Both parties acknowledge and agree that this Contract does not constitute a partnership between the parties or constitute one party as agent or representative of another.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 These terms and conditions may be meant to be read in conjunction with Packserv's Service Maintenance Contract (including any schedules or appendices), and:
- (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Packserv 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 Packserv 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 Packserv in respect of the Equipment hire and/or services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Packserv; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Client shall give Packserv not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Packserv as a result of the Client's failure to comply with this clause.

### 5. Charges and Payment

- 5.1 At Packserv's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by Packserv to the Client in respect of Equipment supplied on hire; or

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- (b) Packserv's current Charges, at the date of Delivery of the Equipment, according to Packserv's current Charges list; or
- (c) Packserv's quoted Charges (subject to clause 5.2) which shall be binding upon Packserv provided that the Client shall accept in writing Packserv's quotation within thirty (30) days.
- 5.2 Packserv reserves the right to change the Charges:
- (a) if a variation to the Goods/Equipment which is to be supplied is requested; or
- (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, obstructed access, incorrect container specifications received from the Client, inclement weather, etc.) which are only discovered upon commencement of the Services; or
- (c) in the event of increases to Packserv in the cost of labour or materials (including but not limited breakages of Equipment on hire upon return), which are beyond Packserv's control.
- 5.3 Variations will be charged for on the basis of Packserv's quotation, and will be detailed in writing, and shown as variations on Packserv's invoice. The Client shall be required to respond to any variation submitted by Packserv within ten (10) working days. Failure to do so will entitle Packserv to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Packserv's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 13.2, and any outstanding balance thereof shall be due as per clause 5.5.
- 5.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by Packserv, which may be:
- (a) on Delivery of the Equipment; or
- (b) by way of instalments/progress payments in accordance with Packserv's payment schedule;
- (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Packserv.
- 5.6 Discounted hire Charges may only be applied future hire Contracts and only when paid in advance. If The Client cancels the hire before the agreed return date, Packserv reserves the right to charge back on a pro rata basis any discount applied for the period of the actual hire and any applicable administrative charges. Daily rate hire is available at fifty percent (50%) of the weekly rate per day. Overrun may also be charged for hire periods shorter than a week at a rate of twenty-five percent (25%) per day for additional days outside of the weekly Charge.
- 5.7 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and Packserv.
- 5.8 Packserv may in its discretion allocate any payment received from the Client towards any invoice that Packserv determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Packserv may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Packserv, payment will be deemed to be allocated in such manner as preserves the maximum value of Packserv's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 5.9 If any part of an invoice is in dispute then the Client shall notify Packserv in writing within fourteen (14) business days once in receipt of the invoice, then the Client may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
- 5.10 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to Packserv an amount equal to any GST Packserv must pay for any supply by Packserv under this or any other Contract for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 5.11 Receipt by Packserv of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 6. Hire Period**
- 6.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 6.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment departs from Packserv's premises and will continue until the return of the Equipment to Packserv's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 6.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 6.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Packserv confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Packserv 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.
- 6.5 Off-hire receipts will only be issued when the Equipment has been either collected by Packserv, or returned to Packserv's premises.
- 7. Delivery**
- 7.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Equipment at Packserv's premises; or
- (b) Packserv (or Packserv's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.2 At Packserv's sole discretion the cost of Delivery is in addition to the Charges.
- 7.3 Packserv may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

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7.4 Any time specified by Packserv for Delivery of the Equipment is an estimate only and Packserv will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that Packserv is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then Packserv shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

### 8. Risk

- 8.1 Packserv retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 8.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Packserv for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 8.3 The Client will insure, or self-insure, Packserv's interest in the Equipment 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 arising out 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.
- 8.4 The Client accepts full responsibility for and shall keep Packserv 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.

### 9. Title

- 9.1 The Equipment is and will at all times remain the absolute property of Packserv, and the Client must return the Equipment to Packserv upon request to do so.
- 9.2 If the Client fails to return the Equipment to Packserv as is required under this Contract or when requested to do so, then Packserv or Packserv's agent may (as the invitee of the Client) enter upon and into any 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. Any costs incurred by Packserv as a result of Packserv so repossessing the Equipment shall be charged to the Client.
- 9.3 The Client is not authorised to pledge Packserv's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

### 10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 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 creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by Packserv to the Client.
- 10.3 The Client undertakes to:
- 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 Packserv may reasonably require to:
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - register any other document required to be registered by the PPSA; or
    - correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - indemnify, and upon demand reimburse, Packserv 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;
  - not register a financing change statement in respect of a security interest without the prior written consent of Packserv;
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of Packserv.
- 10.4 Packserv 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.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Packserv, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Packserv under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

### 11. Security and Charge

- 11.1 In consideration of Packserv 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).
- 11.2 The Client indemnifies Packserv from and against all Packserv's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Packserv's rights under this clause.
- 11.3 The Client irrevocably appoints Packserv and each director of Packserv as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

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### 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Client must inspect the Equipment on Delivery and must within seven (7) days of Delivery notify Packserv 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 Packserv to inspect the Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 12.3 Packserv acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Packserv makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. Packserv's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Packserv's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Packserv is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then Packserv may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Client which were not defective.
- 12.7 If the Client is not a consumer within the meaning of the CCA, Packserv's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Packserv at Packserv's sole discretion;
  - (b) limited to any warranty to which Packserv is entitled, if Packserv did not manufacture the Equipment;
  - (c) otherwise negated absolutely.
- 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, Packserv shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client failing to properly maintain or store any Equipment;
  - (b) the Client interfering with the Equipment in any way without Packserv's written approval to do so;
  - (c) the Client using the Equipment for any purpose other than that for which it was designed;
  - (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (e) the Client failing to follow any instructions or guidelines provided by Packserv;
  - (f) fair wear and tear, any accident, or act of God.

### 13. Client's Responsibilities

- 13.1 The Client shall:
- (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
  - (b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to Packserv upon request;
  - (c) maintain the Equipment as is required by Packserv (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
  - (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
  - (e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Packserv relating to any such matters or occurrences;
  - (f) not carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of Packserv;
  - (g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
  - (h) refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
  - (i) notify Packserv immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (j) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (k) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Packserv or posted on the Equipment;
  - (l) comply with all work health and safety laws relating to the Equipment and its operation;
  - (m) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Packserv (or Packserv's designated employee);
  - (n) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
  - (o) 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;
  - (p) use the Equipment solely for the Client's own works and shall not permit the Equipment or any part thereof to be used by any other party for any other work.
- 13.2 Immediately on request by Packserv the Client will pay:
- (a) the new list Charges of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Packserv;
  - (b) all costs incurred in cleaning the Equipment;

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- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list Charges of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;
  - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Packserv's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
  - (f) the cost of fuels and consumables provided by Packserv and used by the Client;
  - (g) any costs incurred by Packserv in picking up and returning the Equipment to the Owners premises if the Client does not return the Equipment to the Owners premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.
  - (h) any lost hire fees Packserv would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;
  - (i) any insurance excess payable in relation to a claim made by either the Client or Packserv in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Packserv's.
- 13.3 Only to the extent that the hire of the Equipment exceeds a two (2) years hire period shall clause 10 apply and will constitute a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters clause 10 will apply generally for the purposes of the PPSA. The Client agrees that Packserv may register a security interest as a Purchase Money Security Interest ("PMSI") for the purposes of the PPSA in favour of the Client over the Equipment supplied.

### 14. Cancellation

- 14.1 Without prejudice to any other remedies Packserv may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire Packserv may repossess the Equipment as per clause 9.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. Packserv will not be liable to the Client for any loss or damage the Client suffers because Packserv has exercised its rights under this clause.
- 14.2 Packserv reserves the absolute right to:
- (a) cancel, terminate, or determine this Contract;
  - (b) immediately repossess the Equipment;
- at any time before or during the hire period, without reason, without prior notice, without payment of compensation and without prejudice to any other rights which Packserv may have against the Client. Packserv or its agents may enter any property or premises as per clause 9.2 where the Equipment may be kept, for this purpose.
- 14.3 In addition to clause 14.1 in these terms and conditions, Packserv shall be entitled to cancel the Contract if:
- (a) Packserv reasonably believes that a third party may attempt to take possession of the Equipment;
  - (b) the Equipment is at risk.
- 14.4 In the event that the Client wishes to cancel this Contract then the Client agrees to provide a minimum of seventy-two (72) hours' notice of termination of hire by either telephone or email. At Packserv's sole discretion, the Client shall remain liable for any and all loss incurred (whether direct or indirect) by Packserv as a direct result of the cancellation (including, but not limited to, any loss of profits) such as:
- (a) all hire charges due up to the time of cancellation until such notice is given; or
  - (b) a five percent (5%) cancellation fee may apply to the total hire cost of the Equipment on all agreed long term hires (three (3) month term or more).

### 15. Default and Consequences of Default

- 15.1 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 Packserv's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes Packserv any money the Client shall indemnify Packserv from and against all costs and disbursements incurred by Packserv in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Packserv's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies Packserv may have under this Contract, if the Client has made payment to Packserv, 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 Packserv under this clause 15 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.
- 15.4 Without prejudice to Packserv's other remedies at law Packserv shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to Packserv shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Packserv becomes overdue, or in Packserv's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client has exceeded any applicable credit limit provided by Packserv;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 16. Privacy Policy

- 16.1 All emails, documents, images or other recorded information held or used by Packserv is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Packserv 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"). Packserv acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Packserv that may result in serious harm to the Client, Packserv will notify the Client in accordance with the Act and/or the GDPR. Any

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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.

- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Packserv in respect of Cookies where transactions for purchases/orders transpire directly from Packserv's website. Packserv 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 Packserv when Packserv sends an email to the Client, so Packserv 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 Packserv's website.
- 16.3 The Client agrees for Packserv 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 Packserv.
- 16.4 The Client agrees that Packserv 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 years.
- 16.5 The Client consents to Packserv being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Client agrees that personal credit information provided may be used and retained by Packserv for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/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 Goods/Equipment.
- 16.7 Packserv 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.
- 16.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that Packserv 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 Packserv has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Packserv, 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).
- 16.9 The Client shall have the right to request (by e-mail) from Packserv:
- (a) a copy of the Personal Information about the Client retained by Packserv and the right to request that Packserv correct any incorrect Personal Information; and
  - (b) that Packserv does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 16.10 Packserv 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.
- 16.11 The Client can make a privacy complaint by contacting Packserv via e-mail. Packserv 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](http://www.oaic.gov.au).

## 17. Service of Notices

- 17.1 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.
- 17.2 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.

**18. Trusts**

- 18.1 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 Packserv may have notice of the Trust, the Client covenants with Packserv 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 Packserv (Packserv 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.

**19. General**

- 19.1 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.
- 19.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales the state in which Packserv has its principal place of business, and are subject to the jurisdiction of the Newtown Courts in that state.
- 19.3 Subject to clause 12, Packserv 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 Packserv of these terms and conditions (alternatively Packserv's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 19.4 Packserv may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 19.5 The Client cannot assign or licence without the written approval of Packserv.
- 19.6 Packserv may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Packserv's sub-contractors without the authority of Packserv.
- 19.7 The Client agrees that Packserv may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Packserv to provide Equipment on hire to the Client..
- 19.8 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.
- 19.9 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.