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Geelong & Coastal Hire Terms & Conditions

1. Definitions

"Equipment" means the items hired out by the Company to the Client.

"Client" means any person who requests the Company to hire Equipment to the Client, including the clients, its employees and agents.

"Company" means Third Taljan Pty Ltd (ACN 007 107 600) as Trustee of the Friel Family Trust (ABN 44 179 786 456) Trading as Geelong and Coastal Hire (GCH), its employees and agents.

'Terms' means these terms and conditions.

2. Terms of Payment

The Client agrees to pay:

2.1 the Company's hire charge and any other charges, including charges for loss, damage and repairs or any tax, GST, duty, levy, or other expenses paid or payable by the Company; all hiring charges including taxes and duties are to be paid prior to delivery of the Equipment.

The Client agrees to provide the Company with the Client's credit card number, expiry date and any other information which may be necessary to debit the Client's credit card prior to delivery of the Equipment., subsequent charges for loss, damage, repairs or other expenses are to be paid within seven days of the relevant invoice. The Client hereby authorises the Company to debit the Client's credit card with the amount shown on the relevant invoice together such additional costs and expenses charged by the relevant bank or credit provider.

2.2 The Client agrees to pay any expenses incurred or loss suffered by the Company as a result of breach by the Client of its obligations pursuant to these Terms (including legal costs on an indemnity basis) and to, pay all costs and expenses incurred by the Company, its legal advisers, mercantile agents and others in respect of action instituted or being considered against the Client, whether for debt, possession of any Equipment or otherwise.

The Client acknowledges and agrees that the Company may pay a rebate, commission or other financial benefit to event organisers or like suppliers in connection with the hiring of the Equipment to the Client.

3. Hire

3.1 The Company agrees to hire the Equipment on an exclusive basis to the Client on these Terms and the terms of the customer order form. If there is any inconsistency, these terms prevail; the client formally acknowledges that possession of the Equipment must remain with the Client and further that the Client has no right to part with possession of the Equipment on a sub hire basis or on any basis whatsoever.

3.2 Subject to clause 3.3, the Hire Period commences on the Commencement Date, regardless of whether you are ready or able to accept or hire the Goods at that time, and continues indefinitely until the Goods are back in our control and possession or the hire is otherwise terminated under the terms of this Contract.

3.3 If you are not ready or able to or don't accept or hire the Goods for whatever reason on the Anticipated Works Date Commencement Date, the Anticipated Works Date will become the Commencement Date and the Hire Charges shall still accrue and be payable from that Commencement Date, and at our sole discretion you shall be liable for the payment of such charges and all other applicable fees and charges payable under this Contract, as per the terms in this Contract, notwithstanding that you do not have possession of the Goods.

3.4 If specified in the Quotation, a minimum Hire Period will apply to this Contract and if before the end of the Minimum Hire Period we terminate this Contract due to a Default Event, you end the hire, terminate this Contract or return the Goods to us, you must pay us all Hire Charges in respect to the balance of the Minimum Hire Period, plus any other costs or fees payable on termination of this Contract.

3.5 For the avoidance of doubt:

(a) the activation of Hire Charges under clause 3.3, does not relieve you of your obligation to fulfill the Minimum Hire Period or any other terms and conditions stipulated in this Contract; and

(b) after the expiry of the Minimum Hire Period, this Contract will continue until terminated by either party under this Contract.

3.6 We may increase the Price on an annual basis and at the end of any Minimum Hire Period to prevailing market rates. If we exercise our rights under this clause, you are entitled, within 30 days of us notifying you of any price increase, to terminate this Contract and return the Goods to us. All other provisions of this Contract regarding You acknowledge and agree that by not taking any action in response to the Price increase notification, you waive any right to dispute or challenge the validity or applicability of the Price increase during the Hire Period.

4. The Company

4.1 The Company may terminate hire of the Equipment any time on the earlier of:

a) the expiry of the hire period designated on the Customer Application form.

b) the Client being in breach of these Terms, in which case the client shall have no claims against the Company for such termination.

4.2 By Client

The Client may terminate the hire of the Equipment by:

(a) returning the Equipment to the Company during normal working hours; or

If the Company has agreed in writing beforehand to collect the Equipment on termination, notifying the Company that the Equipment is ready for collection, provided that

(b) the Client keeps the Equipment safe until collection.

4.3 Effect of Termination

(a) upon termination of hire, the Company is entitled to take possession of the Equipment immediately and for this purpose the Client irrevocably appoints the Company as the Client's agent and authorises the Company to:

(i) enter upon any land or premises upon which the Equipment is situated or where the Company has any reason to believe that the Equipment may be situated; and

(ii) remove the Equipment whether or not it is affixed to the land or premises, connected to property or equipment not owned by the Company, in use by the Client or any other person or containing property not owned by the Company, in use by the Client or any other person or containing property not owned by the Company.

(b) if the Equipment is not ready for pick-up by the Company at the expiration or termination of the hire period the Client shall pay an additional charge being the daily rate for every additional day or part thereof that the equipment is retained by the Client

5. The Hirer's Obligations

The Client will:

5.1 hire the Equipment at its own risk, and bear responsibility for the Equipment hired from the time of its delivery into the possession of the Client until collection by or return to the Company.

5.2 where necessary be responsible to obtaining the necessary permits and/or plans and pay such fees as may be required to use the Equipment.

5.3 upon installation, delivery or collection of the Equipment, immediately examine:

(a) the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. In accepting the Equipment, the Client acknowledges that it has duly examined the Equipment and has satisfied itself as required.

(b) The Client acknowledges that it has not in any way relied upon the skill or judgement or any representation made by or on behalf of the Company in respect of the Equipment, its purpose, suitability or performance. Should the Client alter its installation or delivery requirements prior to, during, or after installation or delivery, the Client is liable for all extra costs incurred by the Company,

5.4 not. remove the Equipment from the location designated in the order form, and must not sub-hire, part with possession or part with control of, the Equipment, without the Company's prior written permission.

5.5 assume the risk of and indemnify and hold the Company harmless from and against any and all property damage and personal injury resulting from:

(a) the use of the Equipment;

(b) contact with underground cables, pipes, services or other obstructions; and

(c) all necessary surface repairs.

5.6 use the Equipment in a proper, safe and prudent manner and only for the purpose and capacity for which it was designed.

5.7 comply with any written instructions given to the Hirer or accompanying the Equipment.

5.8 ensure all Equipment is returned or ready for collection by the Company in a clean, dry and properly packed condition and, if being collected, is readily accessible; and

5.9 will pay for all cleaning or drying costs and for any damage resulting from not properly drying, cleaning and/or packing the Equipment.

5.10 not hire the equipment to a third party nor permit the equipment to be removed from its possession.

6. Property

The Client acknowledges that the Company may inspect the Equipment at any time during the period of hire, whether notice of such inspection is given to the Client or not, and the Client shall provide all assistance and co-operation necessary to facilitate such inspection of the Equipment. The Client shall indemnify the Company in relation to any action of trespass or any other action or claim against the Company in the course of the Company exercising its right to inspect the Equipment. The Client acknowledges that all property In and title to the Equipment at all times remains with the Company, the Client does not acquire any property in or title to the Equipment and the Client's interest in the Equipment is as bailee of the Company only.

7. Loss of or Damage to Equipment.

If the Equipment Is lost, breaks down or is damaged, the Client must immediately notify the Owner of such event. Notification shall not absolve the Client from its obligations under these Terms. In the event that the Equipment breaks down or becomes unsafe to use, the Client shall immediately stop using the Equipment and take all steps necessary to prevent the Equipment from sustaining any further damage. The Client must also take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment and must not repair or attempt to repair the Equipment without the Company's prior written consent. If the Equipment is lost or damaged and the loss of or damage to the Equipment is caused by the negligence or wilful act or omission of the client or the breach of any of these Terms by the Client, the client shall without limitation be liable for;

7.1 any costs incurred by the Company in repairing or replacing the Equipment;

7.2 hire charges for the Equipment until the Equipment is repaired or replaced; and

7.3 any other costs whatsoever incurred or loss suffered by the Company as a result of the damage to or loss of the Equipment.

8. Release and Indemnity

The Client hereby releases the Company from, and agrees to indemnify the Company in respect of any third party claims, action, suits, demands, costs and expenses for damage or injury to person or property arising directly or indirectly out of the hire or use of the Equipment by the Client or the Client's breach of any of these terms.

9. Damage Waiver

Please note this is separate and distinct from insurance (refer clause 10). The Client agrees to pay a damage waiver to the Company to cover any costs associated with any accidental damage to a particular item of Equipment, provided that the replacement cost and/or the cost of repairs to any Equipment which was damaged does not exceed 10% of the hiring fee for the particular item of Equipment. If the damage exceeds 10% of the hiring fee for the particular item of Equipment, then clause 7 shall apply. The damage waiver does not apply to or cover any other damage to or loss of Equipment including, without limitation:

9.1 damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment;

9.2 damage or loss due to the loss or disappearance of the Equipment;

9.3 damage caused by the use or operation of Equipment in contravention of any of these Terms; and

9.4 damage to, or loss of, the Equipment from any cause whatsoever.

10. Insurance

The Client will maintain at its own expense all appropriate policies of insurance:

10.1 for theft and damage to the Equipment hired in an amount not less than the full replacement cost of the Equipment; and

10.2 for liability, property and casualty insurance coverage in amounts necessary to fully protect the Company and its Equipment against all claims, loss or damage whatsoever and will produce written evidence of such insurance upon request.

11. Limitation of Liability

To the full extent permitted by law, all warranties, conditions and guarantees that may otherwise apply or be implied are excluded and the Company's only obligation resulting from a breach by it or of any condition, warranty or guarantee that cannot be excluded is limited to replacing the Equipment or supplying Equipment similar to the Equipment, repairing the Equipment, paying the cost of replacing the Equipment or paying the cost of repairing the Equipment.

12. Security Interest

12.1 These Terms create a security interest in favour of the Company in the Equipment pursuant to the Personal Property Securities Act 2009 (Cth).

12.2 The Client undertakes to immediately do such acts and provide such information as in the Company's opinion may be necessary or desirable to enable the Company to perfect any security Interest created or provided for by these Terms, as a perfected security Interest with first priority.

12.3 To the fullest extent permitted by law, the Client waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for, or perfected in the manner contemplated by, these Terms.

13. Force Majeure

If the Company is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes. lockouts, fires, riots, civil commotion or unrest, interference

by civil or military authorities or act of war) the Company may give written notice to that effect to the Client, giving particulars of such force majeure in which case the obligations of the Company under these Terms shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure.

The Company shall not be liable for any loss or damage suffered by the Client as a result of any delays caused by such force majeure events.

14. Credit Reporting

The Client authorises the Company to:

14.1 obtain from a credit reporting agency a credit report containing personal information about the Client and the Client's guarantors pursuant to section 18K(1)(b) of the Privacy Act 1988;

14.2 obtain a report from a credit reporting agency and other information in relation to the Client's commercial credit activities;

14.3 in accordance with section 18N(1)(b) of the Privacy Act 1988, give to and obtain from any credit provider that may be named in a credit report issued by a credit reporting agency information about the Client's credit arrangements, which may include information about credit worthiness, credit standing, credit history or credit capacity; and

14.4 use any credit information for the purposes of this contract (section 18L(4) of the Privacy Act 1988) and assisting the Client to avoid defaulting on its payment obligations, notifying credit providers of a default, and assessing credit worthiness.

15. Jurisdiction

These terms and conditions are governed by the Laws of Victoria and the Client and the Company submit to the jurisdiction of the courts of that State.

16. Charge/Interest

The Client will pay on demand interest at the Overdraft Rate on any monies payable hereunder which may from time to time be due and payable but unpaid for thirty (30) days, calculated on a daily basis and compounded monthly commencing the date the monies first became due to and including the date the monies are paid in full.

The Client charges in favour of the Company all its estate and interest in any land, and in any other assets whether tangible or intangible ln which the Client now has any legal or beneficial interest or in which the Client may later acquire any such Interest with payment of aIl monies owed by the Clients and agree upon request ln writing, to execute a registrable instrument transferring to the Company, the Clients estate and interest by way of security. The Client hereby grants an equitable charge over its real estate and hereby authorises the Company to lodge a caveat in respect thereof.

17. Miscellaneous

If any of the Terms becomes void or unenforceable for any reason then that part will be severed from these Terms to the intent that all other parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts. Failure by the Company to insist upon strict performance of any of these Terms, or to exercise in whole or in part any right that it may have under these Terms or at law, shall not be deemed to be a waiver of any rights that the Company may have and shall not be deemed a waiver of any subsequent breach by the Client of any of these Terms.