


# EMM KAY GROUP PTY LTD

## MOTOR VEHICLE (RIDE SHARE) RENTAL AGREEMENT

This Agreement contains all of the terms that apply to your rental of a Vehicle from Us. Therefore, we ask you that read this Agreement carefully and let us know if you have any questions or concerns. Once you sign this Agreement, you agree to be bound by each of the terms contained in this Agreement, whether or not you have read its contents

Hirer	Name / Entity	fshgfdsh
	ABN / ACN	52 652 574 528
	Address	fsdgdsfh
	Drivers' License No	2354354
	DOB	1992-01-03
	Email	kalyan.varma1812@y7mail.com
	Contact Number	353252
Authorised Driver(s) (if applicable)	Name	
	DOB	
	Address	
	Drivers' License No	
Vehicle	Make / Model / Year	Suzuki / Swift / 2016-01-01
	Odometer	355256
	Rego	1RT7PS
	VIN	JSAFZC82S00332109
Agreed Hire Period	Start Date	2025-03-20
	End Date	2025-03-27
Insurance	To be provided by Us, as per the <b>enclosed</b> PDS Please note that under no circumstances will any Insurance cover any driver under the age of 21 years old, or any driver that has held a Driver's License issued by an Australian State or Territory for less than 2 years.	

## ANNEXURE A – HIRE CHARGES

<b>Base Hire Charge</b> (to be applied and debited weekly in advance, commencing on the date this Agreement is signed)	300.00
<b>Deposit</b>	233.00
<b>Insurance Excesses</b>	In the case of a claim under any Insurance, \$1500 per claim, plus: (a) a further \$500 if the circumstances relating to the claim involve a driver under 25; (b) a further \$500 if the circumstances relating to the claim involve an unauthorised driver.
<b>Failed Debit or Delayed Payment Charges</b> (to be applied to any failed or delayed payment, in addition to any Damages)	\$20 per failed debit or delayed payment, in addition to any other or further amounts that may be charged pursuant to the Agreement.
<b>Toll Charges</b>	As per all usage during the Hire Period, <b>plus</b> \$20 for each occasion on which you fail to display an e-tag or other toll pass, as required by the toll operator in question.
<b>Name</b>	<div> signature <b>IP Address : 220.233.46.251</b> <b>Date and Time : 2025-03-12 18:47:31</b></div>

### EMM KAY GROUP PTY LTD - ABN: 52 652 574 528 - Hire Terms and Conditions of Trade

#### 1. Definitions

1.1 “**EMM KAY**” means EMM KAY Group Pty Ltd, ABN 52 652 574 528 , its successors and assigns or any person acting on behalf of and with the authority of EMM KAY Group Pty Ltd.

1.2“**Agreement**” means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Agreement.

1.3“**Hirer**” means the person/s, entities or any person acting on behalf of and with the authority of the Hirer requesting the Owner to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:

- (a) if there is more than one Hirer, is a reference to each Hirer jointly and severally; and
- (b) if the Hirer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Hirer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Hirer’s executors, administrators, successors and permitted assigns.

1.4.1“**Equipment**” means all Equipment or Services (including any parts, accessories and/or consumables) supplied on hire by EMM KAY Group Pty Ltd to the Hirer (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 EMM KAY Group Pty Ltd to the Hirer

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 EMM KAY Group Pty Ltd to the Hirer

1.6"Services" mean all Services supplied by EMM KAY Group Pty Ltd to the Hirer at the Hirer's request from time to time.

1.7"Fire Day" means all days of the week including a Saturday, Sunday or public holiday.

1.8"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, Hirer 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.

1.9"Price" means the Price payable (plus any GST where applicable) for the Equipment/Services as agreed between EMM KAY Pty Ltd and the Hirer in accordance with clause 5 below.

1.10"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 Hirer and website and can be accessed either by the web server or the Hirer's computer. **If the Hirer does not wish to allow Cookies to operate in the background when using EMM KAY 's website, then the Hirer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**

1.11"GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999"

## 2. Acceptance

2.1 The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for or accepts delivery of the Services.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Hirer and EMM KAY .

2.3 Any advice, recommendation, information, assistance or service provided by EMM KAY in relation to Equipment/Services supplied is given in good faith, is based on EMM KAY 's own knowledge and experience and shall be accepted without liability on the part of EMM KAY and it shall be the responsibility of the Hirer to confirm the accuracy and reliability of the same in light of the use to which the Hirer makes or intends to make of the Equipment or Services

2.4 The Hirer acknowledges that the supply of Equipment/Services on credit shall not take effect until the Hirer has completed a credit application with EMM KAY and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Equipment or Services request exceeds the Hirers credit limit and/or the account exceeds the payment terms, EMM KAY reserves the right to refuse delivery

2.6 The Hirer acknowledges and accepts that the supply of Equipment or Services for accepted orders may be subject to availability and if, for any reason, Equipment/Services are not, or cease to be available, EMM KAY reserves the right to vary the Price with alternative Equipment/Services as per clause 3.2.

2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Victoria) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 3. Pricing

3.1 Prices quoted for the supply of Equipment/Services exclude GST and any other taxes or duties imposed on or in relation to the Equipment/Services. Any such GST and other taxes or duties are additionally at the Hirer's account.

3.2 At EMM KAY 's sole discretion, or as otherwise agreed between the parties the Price shall be either:

- (a) as indicated on any invoice provided by EMM KAY to the Hirer; or
- (b) EMM KAY 's quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- (c) May be estimate only (subject to clause 3.3) which is a guide to potential price for Equipment/Services.

3.3 If the Hirer requests any variation to the Equipment/Services, EMM KAY may increase the price to account for the variation.

3.4 Subject to clause 3.3, where there is any change in the costs incurred by EMM KAY in relation to the Equipment/Services, EMM KAY may vary its price to take into account of any such change, by notifying the Hirer.

3.5At EMM KAY 's sole discretion, a non-refundable deposit equivalent to one (1) weeks rent may be required. If required, EMM KAY will notify the Hirer.

## 4. Payment

4.1 The time for payment for the Equipment/Services is of the essence.

4.2 The Price will be payable by the Hirer on the date/s determined by EMM KAY , which may be:

- (a) one (1) week in advance;
- (b) the date specified on any invoice or other form as being the date for payment; or
- (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Hirer by EMM KAY

4.3 Payment may be made by electronic/on-line banking, credit card, or by any other method as agreed to between the Hirer and EMM KAY .

4.4 Payment made by credit card will incur a surcharge up to 2.5%.

4.5 The Hirer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Hirer by EMM KAY nor to withhold payment of any invoice because part of that invoice is in dispute

4.6 Prices quoted for supply of Equipment/Services exclude GST and any other taxes or duties imposed on or in relation to the Equipment/Services. In addition to the Price the Hirer must pay to EMM KAY an amount equal to any GST EMM KAY must pay for any supply by EMM KAY under this or any other Agreement. The Hirer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Hirer pays the Price. In addition, the Hirer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price

4.7 Payment terms may be revoked or amended at EMM KAY 's sole discretion, upon giving the Hirer prior written notice.

## 5. Hire Period

5.1 Hire charges shall commence from the time the Equipment leaves EMM KAY 's premises and continue until the Hirer notifies EMM KAY that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

5.2 The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.

5.3 If at the end of the hire period the whole of the Equipment is not returned to EMM KAY then the daily hire charge rate calculated on a pro-rata basis plus twenty percent (20%) shall be payable by the Hirer to EMM KAY until the whole of the Equipment originally supplied is returned to EMM KAY. The parties agree that this is a genuine estimate of damages which will be suffered by EMM KAY should any Equipment not be returned by the Hirer when due.

5.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless EMM KAY confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Hirer notifies EMM KAY 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 Hirer. Upon notice of breakdown EMM KAY undertakes to repair or (where necessary) supply suitable replacement Equipment as soon as EMM KAY is reasonably able.

5.5 Off-hire numbers will only be issued when the Equipment has been either collected by EMM KAY or returned to EMM KAY's premises.

## **6. Access for Delivery or Collection**

6.1 The Hirer shall ensure that EMM KAY has free and clear access to the worksite at which the Equipment is to be, or is, located. If there are any delays due to free and clear access not being available, then the Hirer shall be responsible for (and shall reimburse) EMM KAY for all additional costs incurred by EMM KAY in gaining suitable access to the worksite and/or EMM KAY's Equipment.

## **7. Delivery of Equipment/Services**

7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Hirer or the Hirer's nominated carrier takes possession of the Goods at EMM KAY's address; or
- (b) Delivery ("Delivery") of the Goods and/or Services is taken to occur at the time that EMM KAY (or EMM KAY's nominated carrier) delivers the Goods and/or Services to the Hirer's nominated address even if the Hirer is not present at the address.

7.2 At EMM KAY's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

7.3 EMM KAY may deliver the Equipment/Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.4 Any time specified by EMM KAY for delivery of the Equipment/Services is an estimate only and EMM KAY will not be liable for any loss or damage incurred by the Hirer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment/Services to be delivered at the time and place as was arranged between both parties. In the event that EMM KAY is unable to supply the Equipment/Services as agreed solely due to any action or inaction of the Hirer, then EMM KAY shall be entitled to charge a reasonable fee for redelivery.

## **8. Risk for the Equipment**

8.1 EMM KAY retains title in the Equipment nonetheless all risk for the Equipment passes to the Hirer on Delivery.

8.2 The Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies EMM KAY 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 Hirer.

8.3 The Hirer must prior to Delivery insure, EMM KAY'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 effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

## **9. Title to Equipment**

9.1 The Equipment is and will at all times remain the absolute property of EMM KAY

9.2 If the Hirer fails to allow for the collection of the Equipment to EMM KAY as required under this agreement then EMM KAY or EMM KAY's agent may (as the invitee of the Hirer) enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the Equipment, and for such purpose break open any gate or lock to gain access to the Equipment without being guilty of any form of trespass, any without any liability to repair or re-instate items belonging to the Hirer. Any costs incurred by EMM KAY as a result of EMM KAY so repossessing the Equipment shall be charged to the Hirer. In addition, EMM KAY shall be entitled within seven (7) days of such repossession to be paid by the Hirer all hire charges due, plus all other charges levied in accordance with this agreement.

## **10. EMM KAY's Responsibilities**

10.1 EMM KAY shall have the right to determine the type of operation for which the Equipment may be reasonably used, and the suitability of the Equipment to be used. If at any time EMM KAY believes that its Equipment is not suitable for the type of operation that the Hirer is using the Equipment for then EMM KAY shall have the right to suspend or terminate this agreement without any liability to the Hirer whatsoever.

10.2 EMM KAY shall supply all Equipment in a safe, useable and roadworthy condition.

10.3 Hydraulic hose, fittings and electrical faults caused through age or wear and tear shall be borne by EMM KAY unless the Hirer has contributed to the fault through misuse of the Equipment in which event the Hirer shall pay the cost of repairing the fault.

## **11. Hirer's Responsibilities**

11.1 The Hirer 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 and is fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to EMM KAY upon request;
- (c) check the equipment daily for oil, grease, water and battery levels and any sign of looseness or wear and shall at the Hirer's own cost maintain the Equipment as is required by EMM KAY (including, but not limited to, maintaining (where applicable) water, battery, grease, oil and other fluid levels (using only products approved by EMM KAY), 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, securely stored, and protected against acts of theft or vandalism 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 EMM KAY relating to any such matters or occurrences;
- (f) not carry any animals, illegal, prohibited or hazardous substances on, or in, the Equipment supplied without the prior written permission of EMM KAY;
- (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 refueled upon its return from hire then the costs of refueling (as set out in the hire agreement) shall be charged to the Hirer in addition to the costs of the Equipment hire;
- (i) notify EMM KAY immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification. The Hirer shall immediately take all steps to secure the Equipment so as to prevent any potential injury to person or property, and to prevent any potential or additional damage to the Equipment itself;
- (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 EMM KAY or posted on the Equipment
- (l) 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 EMM KAY (or EMM KAY 's designated address);
- (m) keep the Equipment in their own possession and control and shall not assign the benefit of the hire agreement nor be entitled to sell, sub-let, take a lien, grant any encumbrance, or create any form of security interest over the Equipment, or allow the Equipment to become a fixture (or any part of, a fixture). The Hirer shall immediately inform any person trying to take possession of, or attempting to seize the Equipment (for any reason), of EMM KAY 's interest in, and ownership of, the Equipment, and must immediately notify EMM KAY of any such event;
- (n) 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. In the event that any decal on EMM KAY 's equipment has been removed then all costs incurred by EMM KAY in replacing the same (should EMM KAY wish to do so) will be charged to the Hirer;
- (o) immediately notify EMM KAY should the Equipment become bogged or stuck;
- (p) not move the Equipment from the address where the Equipment was delivered to without the prior written approval of EMM KAY ;
- (q) provide to EMM KAY (upon reasonable notice by EMM KAY ) free access to EMM KAY 's Equipment in order that EMM KAY may examine
- (r) or test the equipment or assess Equipment care and maintenance;
- (s) comply with all Environmental laws as in place from time to time and shall immediately rectify any breach of such laws caused by the use of the Equipment.

#### 11.2 The Hirer must:

- (a) when moving the Equipment comply with any and all safety guidelines advised by either EMM KAY or the manufacturer of the Equipment to ensure the Equipment's safe loading, handling and transportation;
- (b) not at any time attempt to repair Equipment without the prior consent of EMM KAY . Where such consent is given if the repairs prove to be defective any way whatsoever, rectification to EMM KAY 's satisfaction will be at the Hirer's expense.

#### 11.3 Immediately on request by EMM KAY the Hirer will pay:

- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to EMM KAY ;
- (b) all costs incurred in cleaning the Equipment (charged at \$75.00 + GST per hour);
- (c) all costs of repairing any damage caused through the Hirer's use of the Equipment i.e. the amount required to restore the Equipment to the Equipment's pre-hire status;
- (d) the cost of repairing any damage to the Equipment caused by willful or negligent actions of the Hirer;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, theft or burglary, arson or act of god, or (in EMM KAY 's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
- (f) the cost of fuels and consumables provided by EMM KAY and used by the Hirer;
- (g) any lost hire fees EMM KAY would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (h) any insurance excess payable in relation to a claim made by either the Hirer or EMM KAY in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Hirer and irrespective of whether charged by the Hirer's insurers or EMM KAY 's
- (i) where the Equipment has been lost or stolen any costs incurred by EMM KAY in recovering the Equipment;
- (j) any levies, fines, tolls, penalties, or other government charges arising out of the Hirer's use of the Equipment.

### 12. Credit Card Information

#### 12.1 The Hirer will:

- (a) keep the Hirer's personal details, including credit card details for only as long as is deemed necessary by Hirer;
- (b) not disclose the Hirer's credit card details to any third party;
- (c) not unnecessarily disclose any of the Hirer's personal information, except in accordance with the Privacy Policy (clause 19) or where required by law.

#### 12.2 The Hirer expressly agrees that, if pursuant to this Contract, there are:

- (a) any unpaid charges;
- (b) other amounts due and outstanding by the Hirer;
- (c) any Goods (or any part of them) supplied on hire that are subject to any loss, theft or damaged;
- (d) any other additional charges are due from the Hirer which were not known at the time of the return of the Goods,

12.3 The Hirer is entitled to immediately charge the Hirer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Hirer pursuant to the terms of this Contract.

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

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2 Upon assenting to these terms and conditions in writing the Hirer 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 Goods and/or collateral (account) – being a monetary obligation of the Hirer to EMM KAY for Services – that have previously been supplied and that will be supplied in the future by EMM KAY to the Hirer

#### 13.3 The Hirer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EMM KAY may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);

(b) indemnify, and upon demand reimburse, EMM KAY 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 Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of EMM KAY

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of EMM KAY ;

(e) immediately advise EMM KAY of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales

13.4 EMM KAY and the Hirer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

13.5 The Hirer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6 The Hirer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7 Unless otherwise agreed to in writing by EMM KAY , the Hirer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

13.8 The Hirer must unconditionally ratify any actions taken by EMM KAY under clauses 13.3 to 13.5.

13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### **14. Collateral & Assignment**

14.1 The Hirer hereby charges all its right, title and interest in the property or properties referred to in the Hirer's Credit Application/Quotation/Hire Agreement and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of EMM KAY , with the due and punctual observance and performance of all the obligations of the Hirer. The Hirer indemnifies EMM KAY against all expenses and legal costs (on a solicitor/own Hirer basis) for preparing, lodging and removing any caveat

14.2 The Hirer hereby acknowledges that EMM KAY may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under clause 14.1. Such registration of a caveat by EMM KAY over the Hirer's property or properties must not be challenged by the Hirer in any way whatsoever, and the Hirer agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Hirer has paid all monies owing by it to EMM KAY as claimed from time to time.

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

15.1 The Hirer must inspect the Services provided and must within seven (7) days of delivery notify EMM KAY in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Hirer must notify any other alleged defect in the Services provided within two (2) hours after any such defect becomes evident. Upon such notification the Hirer must allow EMM KAY to inspect the defect.

15.2 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**).

15.3 EMM KAY acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4 If the Hirer is a consumer within the meaning of the CCA, EMM KAY 's liability is limited to the extent permitted by section 64A of Schedule 2.

#### **16. Default and Consequences of Default**

16.1 If the Hirer defaults in payment by the due date of any amount payable to EMM KAY , then all money which would become payable by the Hirer to EMM KAY at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Hirer, and EMM KAY may, without prejudice to any of its other accrued or contingent rights

(a) 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 a half percent (2.5%) per calendar month (and at EMM KAY 's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;

(b) charge the Hirer a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;

(c) charge the Hirer for, and the Hirer must indemnify EMM KAY from, all costs and expenses (including without limitation all legal costs and expenses and debt collection costs, commissions and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement;

(d) cease or suspend supply of any further Equipment/Services to the Hirer

(e) by written notice to the Hirer, terminate any uncompleted contract with the Hirer.

16.2 Clauses 16.1(d) and 16.1(e) may also be relied upon, at EMM KAY s option:

(a) where the Hirer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Hirer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Hirer

#### **17. Cancellation**

17.1 Without prejudice to any other remedies EMM KAY may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under these terms and conditions EMM KAY may suspend or terminate the supply of Equipment/Services to the Hirer. EMM KAY will not be liable to the Hirer for any loss or damage the Hirer suffers because EMM KAY has exercised its rights under this clause.

17.2 EMM KAY may cancel any contract to which these terms and conditions apply or cancel delivery of Equipment/Services at any time before the Equipment/Services are delivered by giving written notice to the Hirer. On giving such notice EMM KAY shall repay to the Hirer any money paid by the Hirer for the Equipment/Services. EMM KAY shall not be liable for any loss or damage whatsoever arising from such cancellation.



17.3 In the event that the Hirer cancels delivery of Equipment/Services the Hirer shall be liable for any and all loss incurred (whether direct or indirect) by EMM KAY as a direct result of the cancellation (including, but not limited to, any loss of profits).

## **18. Privacy**

18.1 All emails, documents, images or other recorded information held or used by EMM KAY is Personal Information, as defined and referred to in clause 18.2, and therefore considered Confidential Information. EMM KAY 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"). EMM KAY acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Hirers Personal Information, held by EMM KAY that may result in serious harm to the Hirer, EMM KAY will notify the Hirer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Hirer by written consent, unless subject to an operation of law.

18.2 The Hirer agrees for EMM KAY to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Hirer in relation to credit provided by EMM KAY

18.3 The Hirer agrees that EMM KAY may exchange information about the Hirer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Hirer; and/or
- (b) to notify other credit providers of a default by the Hirer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Hirer including the Hirer's repayment history in the preceding two (2) years.

18.4 The Hirer consents to EMM KAY being given a consumer credit report to collect overdue payment on commercial credit.

18.5 The Hirer agrees that personal credit information provided may be used and retained by EMM KAY for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Equipment/Services; and/or
- (b) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to the provision of Equipment/Services; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Equipment/Services.

18.6 EMM KAY may give information about the Hirer to a CRB for the following purposes:

- (i) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Hirer including credit history

18.7 The information given to the CRB may include:

- (a) personal information as outlined in 18.2 above;
- (b) name of the credit provider and that EMM KAY is a current credit provider to the Hirer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Hirer'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 Hirer no longer has any overdue accounts and EMM KAY has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of EMM KAY, the Hirer has committed a serious credit infringement;
- (h) advice that the amount of the Hirer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

18.8 The Hirer shall have the right to request (by e-mail) from EMM KAY :

18.9 EMM KAY will destroy personal information upon the Hirer's request (by e-mail) or if it is no longer required unless it is required in order to fulfill the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

18.10 The Hirer can make a privacy complaint by contacting EMM KAY via e-mail. EMM KAY 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 Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **19. Compliance with Laws**

19.1 The Hirer and EMM KAY shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation, particularly those in relation to asbestos and/or other hazardous materials (and the safe removal and disposal of the same). The Hirer agrees to indemnify EMM KAY against all claims arising from health issues related to exposure to asbestos at the site.

19.2 The Hirer shall obtain (at the expense of the Hirer) all licenses and approvals that may be required for the Works.

## **20. Trusts**

20.1 If the Hirer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not EMM KAY may have notice of the Trust, the Hirer covenants with EMM KAY as follows:

- (a) the Contract extends to all rights of indemnity which the Hirer now or subsequently may have against the Trust and the trust fund;
- (b) the Hirer 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 Hirer against the Trust or the trust fund. The Hirer 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 Hirer will not without consent in writing of EMM KAY ( EMM KAY will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
  - (i) the removal, replacement or retirement of the Hirer 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.

## **21. Change In Control**

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

## **22. Service of Notices**

22.1 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
- (f) 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.

## **23. Errors and Omissions**

23.1 The Hirer acknowledges and accepts that EMM KAY 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 EMM KAY 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 EMM KAY in respect of the Services.

23.2 In the event such an error and/or omission occurs in accordance with clause 23.1, and is not attributable to the negligence and/or willful misconduct of EMM KAY; the Hirer shall not be entitled to treat this Contract as repudiated nor render it invalid.

## **24. Electronic Payments Act**

24.1 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 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

## **25. Force Majeure**

25.1 Neither EMM KAY or the Hirer shall be liable for any default on a Project due to any force majeure act, event or cause other than lack of funds which is beyond the reasonable control of that party, including:

- (a) Act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination;
- (b) Action or inaction of any government or governmental or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and
- (c) Breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or materia

## **26. General**

26.1 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.

26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which EMM KAY has its principal place of business and are subject to the jurisdiction of the courts in Pakenham

26.3 Subject to clause 8, EMM KAY shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by EMM KAY of these terms and conditions (alternatively EMM KAY's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment/Services).

26.4 EMM KAY may licence and/or assign all or any part of its rights and/or obligations under this contract without the Hirer's consent.

26.5 The Hirer cannot licence or assign without the written approval of EMM KAY

26.6 EMM KAY may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Hirer agrees and understands that they have no authority to give any instruction to any of EMM KAY's subcontractors without the authority of EMM KAY.

26.7 The Hirer agrees that EMM KAY may amend these terms and conditions by notifying the Hirer in writing. These changes shall be deemed to take effect from the date on which the Hirer accepts such changes, or otherwise at such time as the Hirer makes a further request for EMM KAY to provide Equipment/Services to the Hirer

26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

26.9 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.