

# TERMS AND CONDITIONS

## OF PURCHASE AND CONTRACT OF GC LEASING MELBOURNE PTY LTD

### 1. DEFINITIONS, DISTINCTION AND VALIDITY

#### 1.1 In these conditions:

- **Equipment** means the Equipment to be purchased by GRENKE from the Supplier under these Terms and Conditions and to be leased by GRENKE to the Lessee under a Lease Agreement;
- **GRENKE** means GC LEASING MELBOURNE PTY LTD, ABN 75 615 220 196;
- **Lease Agreement** means an agreement for the leasing of Equipment between GRENKE and the Lessee;
- **Lease Documentation** means all relevant information regarding the Lease Agreement, including the name, ABN and contact details of the Lessee, the Equipment selected by the Lessee, and, if applicable, the Licence Conditions, the original offer signed by the Lessee to enter into a Lease Agreement, including the original copy of the delivery confirmation signed by the Lessee, the invoice and any other additional documents requested by GRENKE;
- **Lease Request** means a request made by the Lessee to GRENKE which forms the offer by the Lessee to enter into a Lease Agreement;
- **Lessee** means the company, partnership, trust or individual specified in the Lease Agreement who wishes to lease the Equipment for business purposes from GRENKE;
- **Purchase Agreement** means an agreement for the purchase of Equipment by GRENKE from the Supplier;
- **Purchase Notification** means the notification given by GRENKE under clause 4.1;
- **Purchase Offer** means the offer made by the Supplier to GRENKE for the purchase by GRENKE of the Equipment pursuant to clause 5.2;
- **Supplier** means the party from whom GRENKE purchases the Equipment;
- **Terms and Conditions** means these general terms and conditions of GRENKE for the purchase of Equipment from the Supplier;
- **Warranties** means the warranties provided to GRENKE by the manufacturer / Supplier of the Equipment.

1.2 These Terms and Conditions shall form part of every Purchase Offer made by the Supplier to GRENKE and all Purchase Agreements entered into between the Supplier and GRENKE.

1.3 The statutory provisions shall apply unless these Terms and Conditions or other written agreements between GRENKE and the Supplier contain any provisions to the contrary.

1.4 The Supplier's general terms and conditions of business are hereby excluded and shall not form part of any Purchase Agreement.

1.5 Where the Equipment under the Purchase Agreement includes software, the parties may agree to additional licensing terms and conditions (**Licence Conditions**) provided:

1.5.1 the Supplier provides GRENKE with a copy of the Licence Conditions together with the Purchase Offer;

1.5.2 the Supplier notifies the Lessee of the Licence Conditions; and

1.5.3 a copy of the Licence Conditions is attached to the Lease Agreement prior to signing.

### 2. EQUIPMENT

The Equipment must be new and unused. The Supplier must notify GRENKE if the Equipment models are outdated or discontinued. Since the Equipment is provided to the Lessee for use over a period of several years, it is particularly important to GRENKE that the Equipment meets the latest standards available at the time of delivery.

### 3. WARRANTIES

3.1 The Supplier shall ensure that any Equipment supplied by the Supplier: is of merchantable quality; corresponds with any quantity and description of the Equipment made known to the Supplier or detailed in the Lease Request; is reasonably fit for its purpose where the Lessee has made known to the Supplier (expressly or by implication) any particular purpose for which the Equipment is being used; and is, subject to clause 2 of the Terms and Conditions, in good condition, free of defects and constructed with suitable and sound material and of adequate strength (if applicable). Clause 5.1 applies.

3.2 To the extent permitted by law, GRENKE will assign to the Lessee, or otherwise permit the Lessee to assert, all rights under the Warranties.

3.3 Prior to the Lessee entering into the Lease Agreement with GRENKE and subject to Schedule 2 of the Competition and Consumer Act 2010, the Supplier must notify the Lessee of the fact that any Warranty claim must be directed to the manufacturer / Supplier if the Warranties have been assigned under clause 3.2 of the Terms and Conditions. Subject to law, GRENKE shall not be liable under the Warranties where these have been assigned to the Lessee. This also applies in the event of the manufacturer / Supplier becoming insolvent.

### 4. PURCHASE NOTIFICATION

4.1 The Supplier shall provide GRENKE the Lease Documentation, together with the Lease Request. If the Lease Request and the Lease Documentation are approved by GRENKE, GRENKE shall, subject to clause 4.3 of the Terms and Conditions, notify the Supplier of its intention to enter into the Lease Agreement, whereby such notification is a prerequisite for GRENKE to enter into a Purchase Agreement with the Supplier to buy the Equipment selected by the Lessee.

4.2 The Supplier must ensure that the Lease Agreement is based on, and subject to, the latest version of GRENKE's standard documentation as provided by GRENKE from time to time. The Purchase Notification, if given, shall only apply to the transaction specified in the Lease Request, including the Lessee, the Equipment, the term of the Lease Agreement, the rental payments amount and procurement volume. If the total rental payments under the Lease Agreement are less than the value of the Equipment under the Purchase Agreement, the purchase price under the Purchase Agreement shall be equal to the total rental payments under the Lease Agreement.

4.3 Notwithstanding any of the provisions of this clause 4, the Purchase Notification is not legally binding on GRENKE, does not constitute an offer and shall not create any legal obligation on GRENKE to conclude the Lease Agreement or the Purchase Agreement. GRENKE is entitled to withdraw the Purchase Notification at any time before receiving the Supplier's Purchase Offer without having to state any reasons. In the event GRENKE withdraws its Purchase Notification, GRENKE's liability shall be limited to the costs incurred by the Supplier for the delivery of the Equipment to the Lessee, not exceeding 5 % of

the purchase price of the Equipment, unless the costs were the result of GRENKE's negligence. GRENKE shall not be liable to the Supplier under this clause if the Supplier is responsible for the withdrawal, or if the Lessee has not yet confirmed delivery of the Equipment at the time of the withdrawal.

4.4 In the event that the Purchase Notification becomes null and void or is withdrawn, GRENKE assigns to the Supplier any potential claims which GRENKE may have against the Lessee in connection with the Lease Request. The Supplier accepts this assignment.

### 5. PURCHASE AGREEMENT, WARRANTIES

5.1 Upon receipt of GRENKE's Purchase Notification under clause 4.1, the Supplier may offer to sell to GRENKE the Equipment mentioned in the Lease Documentation. When making such Purchase Offer the Supplier warrants the following:

5.1.1 the Equipment (including any required instructions and user manuals) was delivered to the Lessee on the specified delivery day in full, in good working order and in accordance with the Lease Agreement, the Lessee has signed the delivery confirmation (a copy of which has been provided to GRENKE), tested and inspected the Equipment to the Lessee's satisfaction and received any necessary directions;

5.1.2 the Supplier is the owner of the Equipment and has the right to transfer unrestricted ownership of the Equipment to GRENKE;

5.1.3 the Lessee has not quoted any purchase price other than the price that is to be paid by GRENKE for the Equipment;

5.1.4 no statements or commitments other than those set out in the Lease Agreement have been made to the Lessee.

5.2 By entering into the Purchase Agreement, the Supplier transfers to GRENKE all warranties relating to the Equipment as provided by the manufacturer.

5.3 GRENKE accepts the Supplier's Purchase Offer under clause 5.1 by paying to the Supplier the purchase price for the Equipment as set out in the Purchase Offer.

### 6. TERMINATION BY GRENKE

6.1 GRENKE is entitled to terminate the Purchase Agreement by written notice to the Supplier if the Supplier:

6.1.1 has not delivered the Equipment to the Lessee as specified in the Lease Documentation;

6.1.2 has not delivered the Equipment on time; or

6.1.3 has not provided the Lessee with the necessary instructions or directions for the use of the Equipment.

6.2 Where the Lease Agreement is terminated pursuant to clause 6.1 of these Terms and Conditions, the Supplier shall be liable for any damage, loss, costs and expenses incurred by GRENKE.

6.3 If, for whatever reason the Lease Agreement was not, or ceases to be, binding on the Lessee, the Purchase Agreement between GRENKE and the Supplier shall immediately be terminated and the Supplier shall, at the Supplier's own risk and expense, recover the Equipment from the Lessee.

6.4 If the Purchase Agreement is terminated for any reason whatsoever the Supplier shall repay to GRENKE the purchase price of the Equipment to which the Purchase Agreement relates, and upon receipt of such payment GRENKE will transfer ownership of the Equipment to the Supplier.

#### 7. INDEMNITY BY THE SUPPLIER, SUPPLEMENTARY AGREEMENTS

7.1 The Supplier shall not make any statement, or agree with the Lessee on any other terms and conditions, except those permitted under these Terms and Conditions.

7.2 If the Supplier breaches clause 7.1, the Supplier shall indemnify GRENKE from and against any damage, loss, costs or expenses incurred by GRENKE and any claim, demand or action brought against GRENKE by the Lessee or any third party arising from a breach by the Supplier of this obligation.

7.3 Clause 7.2 shall apply mutatis mutandis to the Supplier Agreements with the Lessee where these Supplier Agreements result in any damage, loss, costs or expenses incurred by GRENKE or any claim, demand or action brought against GRENKE by the Lessee or any third party.

7.4 The Supplier must ensure that any agreements the Supplier may have with the Lessee and which do not involve GRENKE (**Supplier Agreements**), are clearly marked as such for the Lessee's attention. The Supplier must inform the Lessee that GRENKE is not a party to, or liable under, these Supplier Agreements and that the Lease Agreement with GRENKE is to be performed irrespective of any Supplier Agreements.

#### 8. FURTHER INFORMATION

Upon reasonable request by GRENKE the Supplier shall make available to GRENKE any additional information with respect to the Lessee, the Equipment or its proposed sale/lease.

#### 9. THIRD PARTY LIABILITY, ASSUMPTION OF RISK

9.1 The Supplier shall indemnify GRENKE from and against any damage, loss, costs or expenses incurred by GRENKE and any claim, demand or action brought against GRENKE by any third party arising from the negligence of the Supplier or a breach by the Supplier of its obligations under the Purchase Agreement or the delivery or installation of the Equipment at the Lessee's premises.

9.2 The Equipment shall be delivered to the Lessee at the location stipulated in the Lease Agreement. Until the time the Equipment is delivered to the Lessee and receipt is confirmed by the Lessee signing a delivery confirmation, the Supplier shall bear all risk in the Equipment

#### 10. DEFECTS AFFECTING THE EQUIPMENT

10.1 Under the terms of the Lease Agreement, GRENKE will assign to the Lessee the rights that GRENKE has against the Supplier in the event of defects affecting the Equipment.

10.2 In the event of a defect the Supplier is obliged to rectify the defect as soon as possible after having been notified of the defect by the Lessee or GRENKE.

10.3 If a defect has not been, or cannot be, rectified within a reasonable time after notice was given under clause 10.2, GRENKE is entitled by written notice to terminate the Purchase Agreement, to seek reimbursement of some or all of the purchase price under the Purchase Agreement and the Supplier is obliged to compensate GRENKE for any damage, loss, costs or expenses incurred by GRENKE.

10.4 If the Lessee makes a claim against the Supplier in respect of defects, where the right to make such claim was assigned by GRENKE to the Lessee, the Supplier must inform GRENKE of such claim immediately and provide GRENKE in writing with detailed information about the Lessee's claim. If the Lessee commences legal action against the Supplier in

respect of the defect, the Supplier must keep GRENKE up-to-date on the status of any resulting legal proceedings on an ongoing basis by providing to GRENKE copies of pleadings, court orders and, in particular, informing GRENKE of the outcome of the legal dispute.

10.5 The Supplier may only repossess the Equipment after the Supplier has reimbursed the purchase price of the Equipment to GRENKE. If the Supplier takes possession of the Equipment without reimbursing GRENKE for the purchase price, then the Supplier must deliver the Equipment at the Supplier's cost to GRENKE at an address specified by GRENKE.

10.6 The Supplier undertakes to indemnify and hold GRENKE harmless in respect of any damage, loss, costs or expenses incurred by GRENKE resulting from the Lessee refusing to perform its obligations under the Lease Agreement because of the Equipment being defective.

#### 11. NO ASSIGNMENT

The Supplier shall not pledge, mortgage, assign, sub-license, sub-contract, transfer or otherwise dispose of its rights or obligations under the Purchase Agreement to any third party without the prior written consent of GRENKE.

#### 12. MISCELLANEOUS

12.1 The Purchase Agreement and any documents referred to therein constitute the entire understanding between the parties with respect to the subject matter thereof and supersede all prior agreements, negotiations and discussions between the parties relating thereto. Any amendment or variation to the Purchase Agreement shall be made in writing signed by both parties.

12.2 The Purchase Agreement between the Supplier and GRENKE shall be governed by the laws of Victoria and shall be subject to the exclusive jurisdiction of that State.

#### USE OF YOUR INFORMATION

'Personal Information' means personal information in relation to you as defined under the Privacy Act 1988 ('Act') collected by us from any source, including, but not limited to, information about you, your financial circumstances, creditworthiness, credit history, credit standing and credit capacity. We collect, hold, use and disclose your Personal Information including your credit related personal information in accordance with our Privacy Policy available on our website at [www.grenke.com.au/privacypolicy](http://www.grenke.com.au/privacypolicy). You acknowledge and agree that we may (as allowed by the Act) disclose your Personal Information to our associated entities, third parties engaged to provide services to us, credit reporting agencies, that we may obtain from a credit reporting agency or other credit provider, a credit report containing personal credit information about you to assess this order form or in relation to collection of any overdue payments. You also acknowledge that we may give to and seek from other credit providers (whether named in this order form or not) information about your credit arrangements including information about your credit worthiness, credit history or credit capacity (as allowed by the Act), and that this information may be used to assess an application for lease of the Equipment, to notify other credit providers of default by you, to exchange information with other credit providers as to the status of this credit arrangement when in default and to assess your credit worthiness. You acknowledge that your personal information is likely to be disclosed to recipients located in Germany. You expressly consent to us disclosing your Personal Information to third parties located outside Australia whereby a) we will not be accountable under the Act, b) you will not be able to seek redress under the Act, c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, d) you may not be able to seek redress in the overseas jurisdiction; and e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.

**PLEASE TELEPHONE US ON 03 913 245 00 IF YOU WANT TO HAVE DETAILS OF THOSE CREDIT REFERENCE AND FRAUD PREVENTION AGENCIES FROM WHOM WE OBTAIN AND PASS INFORMATION ABOUT YOU. YOU HAVE A RIGHT TO RECEIVE A COPY OF THE INFORMATION WE HOLD ABOUT YOU IF YOU APPLY TO US IN WRITING. TO RECEIVE A COPY A FEE WILL BE PAYABLE.**