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## Peek Exhibition – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "PE" shall mean Feijoa Holdings Limited T/A Peek Exhibition, its successors and assigns or any person acting on behalf of and with the authority of Feijoa Holdings Limited T/A Peek Exhibition.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting PE 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 part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" shall mean all Goods supplied by PE to the Client (and where the context so permits shall include any supply of Equipment and/or Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by PE to the Client (where the context so permits the terms 'Goods', 'Equipment' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by PE to the Client (and where the context so permits shall include any supply of Goods and/or Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other order / authorisation form provided by PE to the Client.
- 1.5 "Services" shall mean all services supplied by PE to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods and/or Equipment as defined above).
- 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 Goods and/or Equipment via the website.**
- 1.8 "Price" shall mean the price payable (plus any GST where applicable) for the Goods as agreed between PE and the Client in accordance with clause 6 of this contract.

### 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 Goods.
- 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 Client and PE.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on PE's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.5 The Client acknowledges and accepts that:
- (a) all pricing is in New Zealand Dollars (NZD); and
  - (b) online ordering is only available for delivery to New Zealand addresses; and
  - (c) PE does not export outside of New Zealand unless agreed by special arrangement.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that PE 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 PE 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 PE in respect of the 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 PE; 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 PE 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, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by PE as a result of the Client's failure to comply with this clause.

### 5. Online Ordering

- 5.1 The Client acknowledges and agrees that:
- (a) PE does not guarantee the website's performance;
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by PE;
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such PE cannot warrant against delays or errors in transmitting data between the Client and PE including orders, and you agree that to the maximum extent permitted by law, PE will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;

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- (e) when making a transaction through the website, the Client's Personal Information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by PE and/or displayed on the website. The encryption process ensures that the Client's Personal Information cannot be read by or altered by outside influences;
  - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, PE shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 PE reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of PE's business, or violated these terms and conditions.

### 6. Price and Payment

- 6.1 At PE's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by PE to the Client in respect of Goods supplied; or
  - (b) the Price as at the date of delivery of the Goods/Equipment according to PE's current price list; or
  - (c) PE's quoted Price (subject to clause 6.2) which shall be binding upon PE provided that the Client shall accept PE's quotation in writing by the date specified, or if no date is specified, then within ten (10) days from the date of the quotation.
- 6.2 PE reserves the right to change the Price if a variation to PE's quotation is requested. Any variation from the plan of scheduled Services, scope or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as limitations to accessing the site, availability of Equipment, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to PE in the cost of Goods and/or Equipment (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of PE's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by PE by the date/time specified or within two (2) working days (whichever occurs the soonest). Failure to do so will entitle PE to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At PE's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by PE, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with PE's payment schedule;
  - (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 PE.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction will apply), or by any other method as agreed to between the Client and PE.
- 6.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PE nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to PE an amount equal to any GST PE must pay for any supply by PE under this or any other contract for the sale of the Goods. 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 Price. In addition, the Client 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.

### 7. Delivery of the Goods

- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that PE (or PE's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At PE's sole discretion the costs of Delivery are in addition to the Price.
- 7.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this contract.
- 7.4 PE may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by PE for delivery of the Goods is an estimate only and PE 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that PE is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then PE shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 8. Risk

- 8.1 If PE retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, PE is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by PE is sufficient evidence of PE's rights to receive the insurance proceeds without the need for any person dealing with PE to make further enquiries.
- 8.3 If the Client requests PE to leave Goods outside PE's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 *Signage*
- (a) When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Client of the original instructions or by the manuscript copy being, in PE's opinion, poorly prepared or by the Client's requirements being different from those originally submitted or described, then the cost of such variations may be charged to the Client and shown as extras on the invoice.
  - (b) Whilst every care is taken by PE to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the draft. PE shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client alterations require additional proofs this shall be invoiced as an extra.

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(c) While every effort will be taken by PE to match PMS or Pantone colours, PE will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final product.

### 8.5 *Branding and Marketing*

(a) Any recommendations made by PE in terms of marketing plans, shall be appropriate for the Client's business and to all intent and purposes, shall not contravene any legislation, including, but not limited to containing prohibited content, the Unsolicited Electronic Messages Act 2007 (Anti-SPAM), or the Broadcasting Act 1989). However, PE shall not be held liable for any costs, loss or damages arising where the Client operates outside PE's recommended guidelines and subsequently is found to be in breach of any legislative requirements.

(b) It shall be the Client's responsibility to provide any information or feedback required by PE in a timely manner. Where the Client fails to comply with this clause, PE shall not be held liable for any delays, loss, costs or damages that may arise as a result to such delays.

## 9. Title of Goods

9.1 PE and Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid PE all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to PE in respect of all contracts between PE and the Client.

9.2 Receipt by PE 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 and until then PE's ownership or rights in respect of the Goods shall continue.

9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:

- (a) the Client is only a bailee of the Goods and must return the Goods to PE on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for PE and must pay to PE the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for PE and must pay or deliver the proceeds to PE on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of PE and must sell, dispose of or return the resulting product to PE as it so directs;
- (e) the Client irrevocably authorises PE to enter any premises where PE believes the Goods are kept and recover possession of the Goods;
- (f) PE may recover possession of any Goods in transit whether or not delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of PE;
- (h) PE may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 10. Title to Equipment

10.1 If the Client fails to return the Equipment to PE then PE or PE's agent may (as the invitee of the Client) enter upon and into 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.

10.2 The Client is not authorised to pledge PE's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## 11. Personal Property Securities Act 1999 ("PPSA")

11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by PE to the Client (if any) and all Goods that will be supplied in the future by PE to the Client.

11.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PE may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, PE for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) 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 PE; and
- (d) immediately advise PE 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.

11.3 PE and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

11.5 Unless otherwise agreed to in writing by PE, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.6 The Client shall unconditionally ratify any actions taken by PE under clauses 11.1 to 11.5.

## 12. Security and Charge

12.1 In consideration of PE agreeing to supply the Goods/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).

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- 12.2 The Client indemnifies PE from and against all PE's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising PE's rights under this clause.
- 12.3 The Client irrevocably appoints PE and each director of PE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13. Defects**
- 13.1 The Client shall inspect the Goods/Equipment on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify PE of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford PE an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which PE has agreed in writing that the Client is entitled to reject, PE's liability is limited to either (at PE's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 13.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 13.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).
- 13.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 14. Warranty**
- 14.1 For Goods not manufactured by PE, the warranty shall be the current warranty provided by the manufacturer of the Goods. PE shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 14.2 To the extent permitted by statute, no warranty is given by PE as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. PE shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 15. Consumer Guarantees Act 1993**
- 15.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by PE to the Client.
- 16. Intellectual Property**
- 16.1 Where PE has designed, drawn or developed design plans and/or Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of PE. Under no circumstances may such design plans, designs, drawings and documents be used without the express written approval of PE.
- 16.2 The Client warrants that all designs, specifications or instructions given to PE will not cause PE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify PE against any action taken by a third party against PE in respect of any such infringement.
- 16.3 The Client agrees that PE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which PE has created for the Client.
- 16.4 PE shall reserve the right to charge a licence fee for any design plan prepared by PE for the Client and subsequently used by any third party.
- 17. Equipment Hire**
- 17.1 PE retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 17.2 In the event that the Equipment is not returned to PE in the condition in which it was delivered PE retains the right to charge the cost of repair or replacement of the Equipment.
- 17.3 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment and the Client accepts full responsibility for the safekeeping of the Equipment and indemnifies PE 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; and
  - (b) 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; and
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by PE to the Client; and
  - (d) comply with all occupational health and safety laws relating to the Equipment and its operation; and
- 17.4 The Client acknowledges and agrees that it loans the Equipment at its own risk and the Client is responsible for safeguarding the Equipment until such Equipment is returned to, or collected by, PE.
- 18. Default and Consequences of Default**
- 18.1 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 a half percent (2.5%) per calendar month (and at PE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes PE any money the Client shall indemnify PE from and against all costs and disbursements incurred by PE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PE's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies PE may have under this contract, if a Client has made payment to PE, 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 PE

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under this clause 18, 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.

- 18.4 Without prejudice to PE's other remedies at law PE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PE shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PE becomes overdue, or in PE's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by PE;
  - (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.

### 19. Cancellation

- 19.1 Without prejudice to any other remedies PE may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions PE may suspend or terminate the supply of Goods/Equipment to the Client. PE will not be liable to the Client for any loss or damage the Client suffers because PE has exercised its rights under this clause.
- 19.2 PE may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice PE shall repay to the Client any sums paid in respect of the Price. PE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by PE (including, but not limited to, any loss of profits) up to the time of cancellation.

### 20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by PE is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. PE acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). PE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by PE that may result in serious harm to the Client, PE will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to PE in respect of Cookies where transactions for purchases/orders transpire directly from PE's website. PE 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 PE when PE sends an email to the Client, so PE 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 PE's website.
- 20.3 The Client authorises PE or PE's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including, 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 or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by PE from the Client directly or obtained by PE from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Client shall have the right to request PE for a copy of the Personal Information about the Client retained by PE and the right to request PE to correct any incorrect Personal Information about the Client held by PE.

### 21. Service of Notices

- 21.1 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.
- 21.2 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.

### 22. Trusts

- 22.1 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 PE may have notice of the Trust, the Client covenants with PE 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;

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- (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 PE (PE 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.

### 23. General

- 23.1 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.3 PE 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 PE of these terms and conditions (alternatively PE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 23.4 PE may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of PE.
- 23.6 PE 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 Client agrees and understands that they have no authority to give any instruction to any of PE's sub-contractors without the authority of PE.
- 23.7 The Client agrees that PE may amend these terms and conditions by notifying 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 PE to provide Goods and or Equipment on hire to the Client.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 23.9 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.