

**RECITAL** TRANZ LOGISTICS agrees to rent to the Customer the Goods and the Customer agrees to rent the Goods from TRANZ LOGISTICS on the terms, conditions, representations and warranties contained in this agreement ("Agreement"). The parties intend to be legally bound by this Agreement.

#### 1. Rental of Goods

TRANZ LOGISTICS rents to the Customer, and the Customer rents from TRANZ LOGISTICS, the Goods for the duration of the Term.

#### 2. Identity of Parties and Use of Goods

The Customer certifies and agrees that:

- it is an Approved Operator;
- it shall use, operate, handle and manage the Goods in a proper and lawful manner;
- it shall notify TRANZ LOGISTICS in writing immediately of any change to its details;
- the warranties, representations and statements made by or on behalf of the Customer, in addition to the personal particulars supplied by or on behalf of the Customer in connection with this Agreement are true and correct in all respects;
- it is not hiring the Goods for recreational purposes; and
- the Goods are provided by TRANZ LOGISTICS for the purposes of this Agreement solely at the risk of the Customer. No responsibility in tort, contract or otherwise (including negligence), will be accepted by TRANZ LOGISTICS for any loss of, damage to or deterioration of any goods, parties or items whatsoever, relating to or arising out of the use of the Goods howsoever caused.

#### 3. Rental Payments

(a) The Customer will pay the Rental Payments to TRANZ LOGISTICS upon demand at the end of the Rental Period, as rent for the Goods. All Rental Payments must be paid to the office of TRANZ LOGISTICS as set out in ITEM 1 of the Schedule or such other place as TRANZ LOGISTICS may direct in writing.

(b) The Customer agrees that its obligations to pay the Rental Payments to TRANZ LOGISTICS and otherwise under this Agreement shall continue notwithstanding, the occurrence of any seizure or defect in or breakdown of the Goods.

#### 4. Late Rental Payments and Interest

Should the Customer fail to pay any Rental Payment or part thereof within seven (7) days of demand by TRANZ LOGISTICS to TRANZ LOGISTICS, the Customer will pay to TRANZ LOGISTICS interest equivalent to the bank overdraft rates or ongoing higher limit, as applicable at that time until full payment of the outstanding Rental Payment is received by TRANZ LOGISTICS.

#### 5. Deposit

The Customer agrees to pay to TRANZ LOGISTICS a deposit in the amount as set out in ITEM 6 of the Schedule. The deposit will be held by TRANZ LOGISTICS until the end of the Term at which time at the sole discretion of TRANZ LOGISTICS, the deposit will be set off against any amount owing and outstanding by the Customer to TRANZ LOGISTICS under this Agreement. The balance of the deposit thereafter, if any, will be returned to the Customer by TRANZ LOGISTICS.

#### 6. Deliveries and Commencement

The Customer will take delivery of and be responsible for the Goods as soon as it enters this Agreement. This Agreement shall not be binding upon TRANZ LOGISTICS nor shall this Agreement commence until an authorised officer has signed it on behalf of TRANZ LOGISTICS.

#### 7. Conditions and Use of the Goods

The Customer agrees:

- To use and permit the Goods to be used only for a Proper Purpose;
- To comply with and conform to all relevant laws, including but not limited to state, territory and federal laws, ordinances and regulations that in any way relate to the possession, use of or maintenance of the Goods, and including compliance with any Uniform Chain of Responsibility legislation in force, from time to time; in Australia and any other legislation relating to road transport, fatigue, speed, mass, dimension and load restraint;
- Not to subject the Goods to:
  - Any tyre wear in excess of normal reasonable wear, which is determined at the sole discretion of TRANZ LOGISTICS; and
  - Load weights above the manufacturer's rated capacity;
- To keep the Goods at entirely its own expense at its place(s) of business in Australia;
- To ensure that the Goods are kept in good mechanical and general working order;
- To use all due care to prevent damage to or loss or destruction of the Goods, other persons or property, including but not limited to:
  - Using or permitting use of the Goods only by properly qualified, licensed and experienced personnel; and
  - Using, keeping, servicing and permitting use, keeping and servicing of the Goods only in accordance with the manufacturer's instructions;
- Not to:
  - Part with personal possession or control of the Goods;
  - sub-lease or bail the Goods to any person;
  - grant any Security Interest over the Goods which would have priority over the Security Interest granted to TRANZ LOGISTICS under this Agreement;
  - Remove the Goods or any part thereof from Australia;
  - alter the Goods or any identifying number, mark or plate which may be affixed to the Goods, or to allow the same of any of them to be in any way altered, obliterated, defaced or covered, including to alter the Goods by removing a component or components of the Goods, such component(s) being provided by TRANZ LOGISTICS as part of the Goods to meet particular Customer specifications or as otherwise provided by TRANZ LOGISTICS as part of the Goods. Any alteration to the Goods is to be treated at TRANZ LOGISTICS's discretion as a loss or damage to the Goods and shall be dealt with in accordance with Clause 12;
  - that any accessories or replacements which now or hereafter are supplied or attached to the Goods become a part thereof and will be subject to the terms and conditions of this Agreement as if it was a part of the original Goods; and
  - to continue to pay the Rental Payments until the Goods are returned to TRANZ LOGISTICS in the same condition as the Goods were delivered by TRANZ LOGISTICS to the Customer, including when the Rental Payments fall due during any period of repair to the Goods that may occur during the Term, except during Servicing and Major Repairs to the Goods.

#### 8. Permit of Goods

The Customer hereby agrees to permit the Goods if required under any relevant law (including but not limited to state, territory or federal law or ordinance(s)) relating or

purporting to relate thereto and to permit the same in the Customer's name as customer and (where required by TRANZ LOGISTICS or by such applicable law or ordinance(s)) in TRANZ LOGISTICS's name as proprietor, but not otherwise.

#### 9. Associated Fees

The Customer will pay any additional permit fees payable in respect of the operation and use of the Goods.

#### 10. Liability

##### 10.1 Exclusion of Liability

With the exception of Consumer Guarantees, TRANZ LOGISTICS excludes:

- any term, condition or warranty that may otherwise be implied into this Agreement;
- any liability for loss or damage incurred as a result of or in connection with the negligence of TRANZ LOGISTICS; and
- any liability for Consequential Loss.

##### 10.2 Liability for Consumer Guarantees

Subject to clause 10.3, the liability of TRANZ LOGISTICS in respect of any breach of or failure to comply with any Consumer Guarantee is limited to the following:

- In the case of goods, to:
  - the replacement of the goods or the supply of equivalent goods;
  - the repair of the goods;
  - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - the payment of the cost of having the goods repaired.
- In the case of services, to:
  - the supplying of the services again; or
  - the payment of the cost of having the services supplied again.

##### 10.3 Exception to limitation

The liability of TRANZ LOGISTICS in respect of a breach of or a failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 10.2 if:

- the goods or services supplied are goods or services "of a kind ordinarily acquired for personal, domestic or household use or consumption", as that expression is used in section 64A of the Australian Consumer Law;
- it is not 'fair or reasonable' for TRANZ LOGISTICS to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or
- the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

#### 11. Indemnity

The Customer agrees to indemnify and hold harmless TRANZ LOGISTICS, its directors, servants, employees, agents and/or Related Bodies Corporate against any fees, actions, damages, loss, costs or expenses including reasonable legal fees for any liability or Claims whatsoever that may be imposed by the law or otherwise made or imposed for any injury, loss of life or damage to persons or property howsoever caused including without limitation any Claims arising out of the Customer's breach of clause 7, any Claims for consequential damages and tax liabilities, directly or indirectly caused by or directly or indirectly arising out of, or directly and indirectly related in whole or in part, to the Goods or parts thereof and/or the use of the Goods or parts thereof.

#### 12. Losses or Damage to Goods

(a) The Customer hereby assumes and shall bear the entire risk of loss or damage to the Goods from any and every event whatsoever or howsoever caused. The Customer also agrees that no such loss or damage to the Goods or any part thereof shall impair or otherwise limit any obligation of the Customer or the rights of TRANZ LOGISTICS under this Agreement. In the event of loss or damage of any kind whatsoever to the Goods, the Customer shall at its own cost and expense and at TRANZ LOGISTICS's option:

- Replace the Goods with like equipment that is in good repair, condition and working order and pay all associated costs; or
  - Pay to TRANZ LOGISTICS the replacement cost of the Goods.
- (b) The Customer agrees to fulfil its obligations in full under Clause 12 (a) within twenty four (24) hours from the time when TRANZ LOGISTICS advises the Customer of its option. The Customer will continue to pay to TRANZ LOGISTICS the Rental Payment for the Goods, until the expiration of the Term.

#### 13. Damage Waiver

##### 13.1 Damage Waiver Options

(a) Subject to clause 13.2, the Customer must accept the Damage Waiver Options available from TRANZ LOGISTICS as set out in ITEM 7 of the Schedule, by paying to TRANZ LOGISTICS the relevant Damage Waiver Option Surcharge(s) in relation to the selected Damage Waiver Option(s).

(b) TRANZ LOGISTICS agrees to waive the Customer's liability under clause 12 for damage or loss to the Goods, or damage or loss to part of the Goods, in relation to a Damage Waiver Option for which the Customer has paid the Damage Waiver Option Surcharge, if, the Customer pays upon request the applicable Waiver Excess Amount noted in ITEM 7 of the Schedule, for each separate event involving damage to or loss of the Goods or those parts of the Goods to which the selected Damage Waiver Option relates.

(c) The Customer must:

- in addition to the Rental Payment, pay the Damage Waiver Charge to TRANZ LOGISTICS on demand; or
- present a Certificate of Currency which notes the Goods and the interest of CTRU Pty Ltd ACN 607513262 as the legal owner of the Goods.

##### 13.2 Exceptions

(a) The Customer is not entitled to accept a Damage Waiver Option under clause 13.1 if:

- the Good is a Rigid Truck and the driver:
  - is under the age of 23 years; or
  - has less than two years practical driving experience for the required class of licence; or
- the Good is a Prime Mover and the driver is under the age of 25 years.
- The Customer, notwithstanding any terms or conditions of this Agreement, remains liable for and must pay TRANZ LOGISTICS:
  - any other amounts arising from any loss or damage to the Goods, other property or parties howsoever caused;
  - for loss or damage to the Goods arising from a failure by the Customer to take all reasonable precautions against such loss or damage;
  - for loss or damage due to negligence or abandonment;

- for loss or damage due to Improper Use;
- for the costs of repairing or replacing the Goods due to damage

howsoever caused by the Customer or any other party that used the Goods during the Term;

- vi. for loss or damage arising from single vehicle accidents;
- vii. for loss or damage due to fire;
- viii. for loss or damage due to theft howsoever caused;
- ix. for loss or damage to Goods accessories howsoever caused.

#### 13.3 Insurance

If the Customer has not obtained coverage of the Goods or parts of the Goods pursuant under the Damage Waiver Options(s) under clause 13.1, the Customer agrees and confirms that it has obtained adequate insurance for the Goods or parts of the Goods for which the Damage Waiver Option(s) have not been obtained and shall provide a certificate of insurance to TRANZ LOGISTICS upon request.

#### 14. Claims and Proceedings

(a) Where the use of the Goods by the Customer or any other party results in an accident or claim, or where damage or loss is sustained to the Goods, the Customer must in addition to its obligations under this Agreement;

- i. ensure that such incident is promptly reported to the police;
- ii. ensure that such incident is promptly reported to TRANZ LOGISTICS;
- iii. co-operate fully with TRANZ LOGISTICS and the insurer of the Goods or parts of the Goods and supply all such information to them as may be required;
- iv. not, without TRANZ LOGISTICS's written consent make or give any offer, promise of payment, waiver, release, settlement, indemnity or admission of liability.

(b) The Customer must in addition to its obligations under this Agreement, prevent the Goods or parts of the Goods from being at any time used, kept or otherwise situated in any manner which would, if they were lost, stolen, or damaged by fire or accident, permit the insurer of the Goods or parts of the Goods to decline a claim arising out of such theft, fire or accident whether under condition or an exclusion contained in the insurance policy.

(c) The Customer confirms and hereby agrees that TRANZ LOGISTICS is irrevocably authorised by it to:

- i. receive all monies payable by the insurer of the Goods or parts of the Goods under the relevant policy or by any other person in respect of loss of or damage to the Goods or parts of the Goods whatsoever and howsoever caused and the Customer hereby appoints TRANZ LOGISTICS as its agent to recover and/or compromise in TRANZ LOGISTICS and the Customer's names, any claim for loss or damage whatsoever (including but not limited to theft or fire) under the relevant policy or otherwise to give effect to releases and receipts for the same; and
- ii. to appropriate any insurance or other monies received by it in respect of loss of or damage to the Goods or parts of the Goods, towards any present or future debt or liability by the Customer to TRANZ LOGISTICS and to appropriate any monies paid by the Customer to any debt or liability arising from this Agreement.

#### 15. Fines

The Customer shall be liable for and pay forthwith any fines, which may be imposed in relation to or arising from the Goods howsoever caused, including but not limited to a breach of any law, ordinance, statute, regulation or by-law governing the operation or use of the Goods.

#### 16. Nature of this Agreement

(a) The Goods are and shall at all times be and remain the sole and exclusive property of TRANZ LOGISTICS and the Customer acknowledges and confirms that it has no right, title, or interest therein or thereto except as expressly stated in this Agreement.

(b) The Customer acknowledges and agrees that it has no authority under this Agreement or otherwise to pledge TRANZ LOGISTICS's credit or involve it in liability.

(c) The Goods shall, as between TRANZ LOGISTICS and the Customer, be considered as chattels.

#### 17. Inspection

(a) The Customer shall produce the Goods for inspection or test on request by TRANZ LOGISTICS and also agrees to permit TRANZ LOGISTICS to have access to the Goods for any purpose at any reasonable time.

(b) The Customer agrees and confirms that TRANZ LOGISTICS is hereby irrevocably licensed to enter any premises where it believes the Goods may be located for the purpose of inspecting or testing them or retaking possession thereof pursuant to its rights under this Agreement even though the Goods may be attached to other goods or land not the property of TRANZ LOGISTICS and the Customer indemnifies TRANZ LOGISTICS from and against all losses suffered or incurred by TRANZ LOGISTICS as a result of exercising its rights under this clause.

#### 18. Authorizations and Privacy Act

The Customer agrees and confirms that TRANZ LOGISTICS is hereby irrevocably authorized to act if it so wishes on the Customer's behalf in exercising any rights or issuing or carrying on or enforcing any legal proceedings which it thinks desirable to protect its rights whatsoever in relation to the Goods and by the signatory hereto the Customer, (or in the event of a corporation – the authorized representative or driver of that corporation) hereby acknowledges and agrees that the provisions of the *Privacy Act 1988* are hereby waived in their entirety in favour of TRANZ LOGISTICS and the Customer agrees that TRANZ LOGISTICS may make all and any enquiries required to allow TRANZ LOGISTICS full recovery of any outstanding debt within this Agreement.

#### 19. Surrender & Associated Costs

(a) TRANZ LOGISTICS may terminate this Agreement without notice in the event that the Customer:

- i. commits a breach of this Agreement;
- ii. engages in gross or serious misconduct; or
- iii. suffers an insolvency or bankruptcy event as set out in clause 21.

(b) The Customer shall at the expiration of the Term or early termination of this Agreement or TRANZ LOGISTICS becoming entitled to retake possession of the Goods pursuant to this Agreement (the "Relevant Time"), return to TRANZ LOGISTICS at its address or such other place it may direct in writing the Goods in good condition repair and working order, ordinary wear and tear resulting from the proper use of the Goods excluded at TRANZ LOGISTICS's determination ("Relevant Condition"). If the Customer fails to deliver up the Goods to TRANZ LOGISTICS at the Relevant Time and in the Relevant Condition the Customer hereby agrees to pay an amount equal to the relevant rental rate under this Agreement for each day until the Goods are delivered up to TRANZ LOGISTICS in the Relevant Condition.

#### 20. Extensions or Renewal of Term

If during the Term the Customer requests of TRANZ LOGISTICS and TRANZ LOGISTICS agree to extend or renew the Term or length thereof or any multiple periods of time thereafter, the Customer hereby agrees and accepts that this Agreement applies in its entirety to each and every such instance without limitation or restriction.

#### 21. Bankruptcy

If during the Term the Customer commits or suffer an act of bankruptcy or has a winding up petition presented against it, or a resolution for its winding up, passed or proposed, or has an Administrator, Liquidator or Receiver appointed, or is deemed to be unable to pay its debts within the meaning of the Corporations Act, TRANZ LOGISTICS shall have and may exercise any one or more of the remedies set out in this Agreement and this Agreement shall at the option of TRANZ LOGISTICS, without notice, immediately terminate.

#### 22. Registration

Registration is the responsibility of TRANZ LOGISTICS.

#### 23. Maintenance and Repairs

(a) TRANZ LOGISTICS is responsible for all Servicing and Major Repairs except repairs or replacements relating to lamps and lenses not resulting from normal wear.

(b) The Customer is responsible for all other maintenance and repairs to the Goods, other than Servicing and Major Repairs.

(c) The Goods are considered to continue on hire during the period in which maintenance, servicing and repairs to the Goods are being conducted.

#### 24. Australian Design Rules

The Customer acknowledges that if the Goods provided by TRANZ LOGISTICS have not been updated to Australian Design Rule 36 – 38, that it is the responsibility of the Customer, to ensure that they do not use the Goods, where the Goods are required to be modified in accordance with these design rules.

#### 25. Severance

In the event of any provision of any clause or part thereof of this Agreement being or becoming invalid, illegal, or unenforceable whether due to the provisions of any statute or otherwise, then that provision shall be severed from this Agreement and the remaining provisions and clauses of this Agreement shall remain in full force and effect and be unaffected by any severance.

#### 26. Assignment

(a) The Customer must not assign its interest in this Agreement, or any part thereof, or any payment or any other right, benefit or interest thereunder without the prior written consent of TRANZ LOGISTICS.

(b) TRANZ LOGISTICS shall have the unilateral right to assign its interest in this Agreement to a third party.

#### 27. PPS Law

27.1 If TRANZ LOGISTICS determines that a PPS Law applies to this Agreement or any Goods supplied or returned under this Agreement, then the Customer must promptly upon request:

- (a) do anything (including obtaining consents, or agreeing such variations, amendments or supplements to this Agreement as may be required) for the purposes of:
  - i. ensuring that any Security Interest created under, or provided for by, this Agreement attaches to the collateral that is intended to be covered by that Security Interest, is enforceable, perfected, maintained and otherwise effective; and any Security Interest created under, or provided for by, this Agreement as a purchase money security interest; or
  - ii. enabling TRANZ LOGISTICS to prepare and register a financing statement or financing change statement; or
  - iii. enabling TRANZ LOGISTICS to exercise any of its powers in connection with any Security Interest created under, or provided by, this Agreement; and
- (b) provide any information requested by TRANZ LOGISTICS in connection with this Agreement to enable it to exercise any of its powers or perform its obligations under PPS Law.

27.2 Anything that is required by TRANZ LOGISTICS to be done under this clause 27 must be done by the Customer at its own expense. The Customer agrees to reimburse the costs of TRANZ LOGISTICS in connection with any action taken by the TRANZ LOGISTICS under or in connection with this clause 27.

27.3 The Customer agrees that:

- (a) TRANZ LOGISTICS is under no obligation to dispose of or retain any Goods or its proceeds within a reasonable time, under section 125 of the PPSA;
- (b) following a default, the Customer has no rights to redeem the Goods or its proceeds under section 142 of the PPSA; and
- (c) following a default, the Customer has no rights to reinstate this Agreement under section 143 of the PPSA.

27.4 The Customer waives the right to receive any notice (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

27.5 The Customer waives its rights to receive:

- (a) a notice of TRANZ LOGISTICS's proposal to remove any Goods or its proceeds which has become an accession under section 95 of the PPSA;
- (b) a notice of TRANZ LOGISTICS's proposal to seize proceeds of the Goods in the form of an account, chattel paper and a negotiable instrument under section 121(4) of the PPSA;
- (c) a notice of TRANZ LOGISTICS's proposal to dispose of any Goods or its proceeds under section 130 of the PPSA;
- (d) a notice of TRANZ LOGISTICS's proposal to retain the Good or its proceeds under section 135 of the PPSA;
- (e) details of the amounts paid to other secured parties in a statement of account provided by TRANZ LOGISTICS under section 132(3)(d) of the PPSA;
- (f) a statement of account under section 132(4) of the PPSA; and
- (g) a copy of or notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by, this Agreement.

27.6 The terms *account, attaches, chattel paper, collateral, financing change statement, financing statement, negotiable instrument, perfected, purchase money security interest and verification statement* as used in this clause 27 have the meaning given to them in the PPSA.

#### 27.7 Rental Payments

All Rental Payments received from the Consumer must be applied in accordance with clause 14(6)(c) of the PPSA.

#### 28. Amendment

This Agreement may not be varied except by written instrument executed by the parties.

## 29. Notices

Either party may serve any notice which it may desire to serve upon the other by delivery of the same on the other party or leaving the same at its address set out in this Agreement, by prepaid postage or facsimile. If the notice is posted, such notice shall be deemed to have been served on the day following the date of postage. If the notice is sent by facsimile, then such notice shall be deemed to have been served upon receipt of confirmation that such facsimile has been received.

## 30. Confidentiality

30.1 The Customer and the TRANZ LOGISTICS:

- (a) may use Confidential Information of the other party solely for the purposes of this Agreement;
  - (b) except as permitted under clause 30.1(c) and subject to clause 30.3, must keep confidential all Confidential Information of the other party; and
  - (c) may disclose Confidential Information only with the prior written approval of the other party (whose approval must not be unreasonably withheld);
- i. to persons who:
- A. are aware and agree that the Confidential Information must be kept confidential; and
  - B. either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party, or

ii. as required by law or stock exchange regulation.

30.2 The parties are not obliged to comply with clause 30.1 in relation to Confidential Information if:

- (a) the Confidential Information becomes public knowledge during this Agreement; or
- (b) the other party became aware of that Confidential Information from a third person, in circumstances where there was no breach of any obligation of confidence.

30.3 PPSA Confidentiality:

- (a) Except if section 275(7) of the PPSA applies, the parties agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
- (b) The Customer agrees not to authorise the disclosure of any information as contemplated under section 275(7)(c) of the PPSA.

## 31. Definitions and Interpretation

### 31.1 Definitions

In these terms and conditions, the following words have the following meanings:

**Approved Operator** means a person who is [over the age of 18 years] with a valid licence to use the Goods and with the relevant training to use, handle and/or manage the Goods.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth); any equivalent State or Territory legislation; or any other applicable consumer laws in a jurisdiction outside of Australia;

**Claim** means any claim by any third party for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all of the Goods, any delay or failure in supplying the Goods.

**Confidential Information** of a party means the following information in any form:

- (a) all confidential information (including without limitation, trade secrets and confidential know-how) relating to that party or a Related Body Corporate to that party from time to time;
- (b) of which the other party becomes aware, both before and after the Goods are supplied to the Customer. Confidential Information includes any Agreement, specification, manufacturing and process information, product information, formulations, calculations, data, software and programs, sales and marketing information, drawings and any other information that may be deemed to be of commercial significance.

**Consequential Loss** means any loss or damage suffered by a party or any other person that is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of use, loss of interest, damage to credit rating or loss or denial of opportunity.

**Consumer Guarantee** means a right or guarantee the Customer may have under the Australian Consumer Law or other rights in relation to the supply of goods or services that cannot lawfully be excluded.

**Corporations Act** means *Corporations Act 2001* (Cth);

**TRANZ LOGISTICS** means Tranz Logistics Pty Ltd ACN 608131451 ;

**Customer** means the person(s), company, firm or organisation named in the Form;

**Damage Waiver Charge** means the amount equal to 12.5% of the Rental Payment;

**Damage Waiver Option Surcharge** means the amount payable under clause 13.1(a) in relation to a Damage Waiver Option, as set out in ITEM 7 of the Schedule;

**Form** means the attached document prepared by TRANZ LOGISTICS for the provision of the Goods to the Customer, as varied in writing by the parties from time to time;

**Goods** has the meaning given to that term in ITEM 5 of the Schedule;

**Improper Use** means the use of the Goods for a purpose other than a Proper Purpose;

**PPSA** means the *Personal Properties Securities Act 2009* (Cth);

**PPS Law** means:

- (a) the PPSA;
- (b) any regulation made under the PPSA; and
- (c) any other legislation or regulation made to implement, or contemplated by, any PPSA Law referred to in paragraph (a) or (b).

**Proper Purpose** means the use of the Goods with reasonable care, diligence and skill for the transport of goods;

**Related Bodies Corporate** has the meaning given to that term in section 9 of the Corporations Act;

**Rental Payments** has the meaning given to that term in ITEM 3 of the Schedule;

**Rental Period** has the meaning given to that term in ITEM 4 of the Schedule;

**Security Interest** means:

- (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
- (b) a security interest as defined in the PPSA; or
- (c) any document to grant or create anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset;

**Servicing and Major Repairs** means repairs to the Goods or replacements of the Goods in whole or in part, resulting from normal wear, including brake lining replacements and

tyre replacements, but excluding:

- (a) brake adjustments;
- (b) light adjustments; and
- (c) [insert any other exclusions], and

**Term** has the meaning given to that term in ITEM 2 of the Schedule.

### 31.2 Interpretation

(a) The singular number shall include the plural and vice versa each gender shall include the other two and words denoting persons shall include corporations.

(b) Where there is more than one Customer, they shall be bound hereunder jointly and severally.

## 32. Dispute Resolution

(a) Should any dispute arise between the parties in connection with this Agreement, the aggrieved party shall give notice of the dispute in accordance with Clause 29 hereof setting out the nature of the dispute.

(b) Within fourteen (14) days of the receipt of such notice the parties shall meet to resolve the dispute and, upon agreement being reached, the notice of dispute shall lapse. Should the parties not be able to agree on a resolution of any dispute, the dispute will be referred to an arbitrator. The arbitrator shall be appointed by mutual consent of the parties, failing an agreement between the parties, the arbitrator shall be appointed by the President of Law Society of Queensland.

## 33. Governing Law

This Agreement shall be construed with and be governed by the laws of the state of Queensland.

## 33. Guarantor

(a) This Clause 33 applies to a Customer that is a company.

(b) Each director of the company (**Guarantor**) jointly and severally, unconditionally and irrevocably guarantees to TRANZ LOGISTICS

(i) the payment of Rental Payments and all other amounts due from the Customer under this Agreement; and

(ii) the performance of all obligations by the Customer under this Agreement.

(b) If the Rental Payments (or part thereof) are irrecoverable from the Customer, and not recoverable by TRANZ LOGISTICS from the Guarantor on the basis of a guarantee, the Guarantor has a separate and principal obligation to:

- (i) indemnify TRANZ LOGISTICS and keep TRANZ LOGISTICS indemnified against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered, paid or incurred by TRANZ LOGISTICS in relation to the non payment of those amounts; and
- (ii) must pay to TRANZ LOGISTICS an amount equal to those amounts.

(c) This Clause 33 is a continuing obligation of the Guarantor, despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until:

- (i) all the Rental Payments and all other amounts due from the Customer under this Agreement have been paid in full; and
- (ii) this Clause 33 has been finally discharged by TRANZ LOGISTICS.