

## TERMS AND CONDITIONS

### Definitions

1. In this Agreement, the following expressions shall have the following meaning:

'**Agreement**' means this agreement and any annexure, schedule or attachment.

'**Kommand**' means Kommand Pty Ltd ACN 634 103 674 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*).

'**Customer**' means the person, firm, organisation, partnership, corporation, trust or other entity hiring and/or purchasing Equipment from Kommand.

'**Equipment**' means any goods or equipment (including, unless otherwise agreed, any replacement parts, components, and other items used to service and maintain the goods or equipment), including associated or attached tools, accessories, software, manuals and parts supplied by Kommand to the Customer in accordance with this Agreement, whether supplied on hire or otherwise (as the context requires).

'**Commencement Date**' means the date the Hire Period commences, being the earlier of:

(a) the date of delivery of the Equipment to the Customer; or

(b) the date the Customer collects the Equipment from Kommand's premises.

'**Hire Period**' means the term the Equipment is hired by the Customer as agreed between the Parties and starting on the Commencement Date.

'**Hire Charge**' means the amount payable by the Customer to Kommand to hire the Equipment for the Hire Period, as based on Kommand's current price list (as amended from time to time) or as based upon the rates set out in this Agreement (where applicable).

'**Additional Costs**' means any and all amounts which are or may become payable by the Customer under this Agreement in addition to the Hire Charge, including, but not limited to, the costs of consumables, applicable travel, transport and/or float charges, toll charges, traffic management expenses, disposal fees, recovery charges, and any other costs and/or expenses incurred by Kommand in relation to the supply of Equipment on hire and/or resulting from the loss and/or damage to the Equipment.

'**Fair Wear and Tear**' means wear and tear which would be normal for similar Equipment operating in usual conditions, but excludes:

(a) dents, scratches, discoloration;

(b) damage to instrumentation, cables, and glass; and

(c) damage caused by impact, collision, abuse, or negligence.

'**Parties**' means Kommand and the Customer, and Party means either one of them.

'**PPSA**' means the *Personal Property Securities Act 2009*.

'**PPSR**' means the Personal Property Securities Register.

### Formation of contract

2. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. Kommand, in its discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 3.

3. Quotations made by Kommand will not be construed as an offer or obligation to supply in accordance with the quotation. Kommand reserves the right to accept or reject, at its discretion, any offer received by it upon provision of written reasons to the Customer. Only written acceptance by Kommand of the Customer's offer will complete a contract.

4. Placement of an order, either verbally or in writing, will imply acceptance of these terms and conditions.

5. At Kommand's sole discretion a deposit may be required. The deposit amount or percentage of the purchase price or Hire Charge due will be stipulated at the time of the order and shall immediately become due and payable upon the formation of a contract in accordance with clause 3.

### Purpose of credit

6. The Customer acknowledges and agrees that the credit to be provided to the Customer by Kommand is to be applied wholly or predominantly for commercial purposes.

### Hire of Equipment

7. With respect to Equipment supplied on hire, the Customer may collect the Equipment from Kommand's premises or may retain Kommand to deliver the Equipment to the Customer's nominated address on the Commencement Date.

8. Upon delivery of the Equipment in accordance with clause 31, the Customer must inspect the Equipment and must, within twenty-four (24) hours, notify Kommand if the Equipment is unsuitable for the purpose of hire or is not in good order. If the Customer fails to provide Kommand with such notice, then, to the extent permitted by law, the Customer shall be deemed to have inspected the Equipment and accepted the Equipment in the condition it was provided and satisfied itself as to the suitability of the Equipment for the purpose of hire.

9. The Hire Period shall commence on the Commencement Date and shall conclude on the date agreed between the Parties, unless extended in accordance with clause 10 hereof.

10. At any time prior to the conclusion of the Hire Period, the Customer may request that the Hire Period be extended. Kommand may at its discretion agree to such an extension.

11. If Kommand agrees to an extension of the Hire Period pursuant to clause 10, the Customer shall be liable to pay to Kommand additional charges for each day (or part thereof) until such time as the Equipment is either:

(a) collected by Kommand; or

(b) returned to Kommand's premises.

12. Upon conclusion of the Hire Period:

- (a) if it is agreed that the Equipment is to be collected by Kommand, the Customer shall ensure that the Equipment is ready for collection by Kommand at the time and place agreed between the Parties in an accessible location in the same state of cleanliness and condition that it was in at the time the Customer took possession of it (Fair Wear and Tear excepted); or
- (b) if it is agreed that the Equipment is to be returned to Kommand's premises by the Customer, then the Customer shall return the Equipment to Kommand's premises by the time and date required in the same state of cleanliness and condition that it was in at the time the Customer took possession of it (Fair Wear and Tear excepted).

**Pricing and payment terms**

13. Where the Customer has approved credit account with Kommand, the terms of payment are strictly thirty (30) days from the date of invoice (or such other period as nominated by Kommand herein).
14. Where the Customer does not have an approved credit account with Kommand, payment shall be due and payable:
- (a) in the case of Equipment supplied on hire, immediately upon completion of the Hire Period; or
  - (b) in the case of Equipment sold under this Agreement, prior to the Equipment being delivered (or such other period as nominated by Kommand's invoice(s)).
15. In consideration of Kommand supplying Equipment on hire, upon completion of the Hire Period, the Customer shall be liable to pay to Kommand:
- (a) the Hire Charge; and
  - (b) all Additional Costs.
16. The Customer must check all invoices and advise Kommand of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Kommand.
17. Should the Customer not pay for the Equipment in accordance with the credit terms as provided herein, or as agreed in writing by Kommand and the Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, Kommand will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
18. The Customer acknowledges that Kommand shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by Kommand.

**Variations**

19. Where the Customer requests or directs that any Equipment be supplied that is not strictly in accordance with the quotation, then such additional Equipment shall constitute a variation, unless otherwise agreed between the Parties.
20. The Customer acknowledges that:
- (a) all variations must be agreed between the Parties in writing; and
  - (b) all variations shall be, at Kommand's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with Kommand's prevailing price list (as updated from time to time).
21. Notwithstanding clauses 19 and 20, and subject to any rights the Customer might have under any relevant legislation, Kommand reserves the right to vary the quoted price if:
- (a) there is any movement in the cost of supplying the Equipment specified in the Customer's order;
  - (b) the Equipment specified in the Customer's order are varied from the Equipment specified in Kommand's quotation;
- or
- (c) otherwise provided for in these terms and conditions.

**Cancellation of orders**

22. Unless otherwise agreed in writing between the Parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to Kommand (in Kommand's sole discretion) any and all costs incurred by Kommand in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
23. Notwithstanding any other rights Kommand may have under this Agreement, Kommand may cancel any order or delivery of any order for the supply of Equipment, by providing written notice to the Customer if the Customer:
- (a) defaults in payment of any invoice by the due date;
  - (b) enters into liquidation or, in the case the Customer is an individual, becomes bankrupt; or
  - (c) breaches an essential term of this Agreement.
24. To the fullest extent permitted by law, Kommand accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of Kommand exercising its rights under clause 23.

**Cancellation of terms of credit**

25. Kommand reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
26. Notwithstanding clause 25, if the Customer defaults in the payment of any amount due to Kommand pursuant to this Agreement and does not cure such default within seven (7) days after being given notice of such default, Kommand may terminate this Agreement (to be effective immediately) upon notice to the Customer.
27. Upon the withdrawal of credit in accordance with clause 25, or upon termination of this Agreement in accordance with clause 26, all liabilities incurred by the Customer become immediately due and payable to Kommand.
28. For the avoidance of doubt, termination of this Agreement will not affect:
- (a) the right of any Party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
  - (b) the rights and/or obligations pursuant to this Agreement which by their nature are intended to survive termination of this Agreement.

## Delivery

29. The Customer acknowledges and accepts that any estimated delivery or supply of Equipment provided by Kommand is an estimate only and Kommand will not be liable for any loss suffered by the Customer as a result of any delay in delivery or non-delivery of the Equipment.
30. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).
31. Delivery of the Equipment is deemed to have occurred when the Equipment is collected by the Customer from Kommand's premises (or by a third party on behalf of the Customer) or transported to a location at the Customer's request, and deliver, delivering, and delivered each have a corresponding meaning.
32. If the Customer retains Kommand to deliver the Equipment, Kommand is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Equipment.
33. The Customer accepts that Kommand may deliver the Equipment by instalments.
34. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery or non-delivery of the Equipment.

## Risk and title

35. Subject to clause 36, the Customer acknowledges and understands that:
- (a) title in the Equipment sold by Kommand under this Agreement does not pass to the Customer until the Customer has made payment in full for the Equipment and, further, until the Customer has made payment in full of all the other money owing by the Customer to Kommand (whether in respect of money payable under a specific contract or on any other account whatsoever); and
  - (b) whilst the Customer has not paid for the Equipment supplied in full at any time, the Customer agrees that property and title in the Equipment will not pass to the Customer and the Supplier retains the legal and equitable title in those Equipment supplied and not yet sold.
36. The Customer acknowledges that Kommand owns all Equipment supplied on hire and in all circumstances retains title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period). The Customer's rights to use the Equipment are as a bailee only.
37. Risk of damage to or loss of the Equipment passes to the Customer on delivery and, in the case of Equipment supplied on hire, remains with the Customer until such time as the Equipment is either collected by Kommand or returned to Kommand's premises. The Customer must insure the Equipment on or before delivery.
38. If the Equipment is damaged, destroyed, or stolen following delivery due to any fault of the Customer, its servants, agents, employees or invitees, including through failure to comply with any term of this Agreement, the Customer shall:
- (a) pay to Kommand all money past due under this Agreement plus the cost of replacement of the Equipment; and
  - (b) indemnify Kommand in respect of any such loss and/or damage, including any consequential losses associated with the loss of the Equipment.
39. Notwithstanding clause 38, if the Equipment is damaged, destroyed or stolen following delivery, Kommand is entitled to receive all insurance proceeds payable for the Equipment. The production of these terms and conditions by Kommand is sufficient evidence of Kommand rights to receive the insurance proceeds without the need for any person dealing with Kommand to make further enquires.
40. If the Customer requests that the Equipment be delivered either to an unattended location or left outside, the Customer acknowledges that Kommand will deliver the Equipment as requested at the Customer's risk.

## Security interest

41. The Customer hereby consents to Kommand recording the details of this Agreement on the PPSR (in any manner Kommand considers appropriate) and the Customer undertakes to do anything that is required by Kommand:
- (a) so that Kommand can acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds;
  - (b) to register a financing statement or financing change statement; and
  - (c) to ensure that Kommand's security position, and rights and obligations, are not adversely affected by the PPSA.
42. Unless the Customer has obtained Kommand's prior written consent, the Customer undertakes not to:
- (a) register a financing change statement in respect of a security interest contemplated or constituted by this Agreement; and
  - (b) create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party.
43. The Customer:
- (a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Agreement;
  - (b) agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

- (c) agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
44. The Customer agrees that it will, if requested by Kommand, sign any documents, provide any information or do anything else Kommand requests, to ensure that any security interest created in Kommand's favour by this Agreement is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
45. Notwithstanding section 275 of the PPSA, the Parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
46. The Customer irrevocably grants to Kommand the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Kommand has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Kommand from any claims made by any third party as a result of such exercise.
47. The Customer will be responsible for Kommand's reasonable costs and expenses in exercising its rights under clause 46. Where Kommand exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Kommand, its employees, servants or agents.

#### **Customer's obligations**

48. The Customer warrants and acknowledges that it shall:
- (a) protect the Equipment against acts of theft and vandalism, and store the Equipment safely and securely (at its own cost);
  - (b) keep the Equipment in its possession, in a suitable place, and not part with possession of any Equipment or enter into any sub-lease agreement in respect of the Equipment without Kommand's prior written consent;
  - (c) not sell, pledge, assign or otherwise deal with the Equipment in a manner inconsistent with Kommand's rights and interest in the Equipment, or remove the Equipment from the nominated address for hire;
  - (d) not alter, tamper with, modify, repair (or attempt to alter, tamper with, modify or repair) any Equipment without the express written consent of Kommand;
  - (e) not alter, remove, deface, or cover up any label, plates, or marks on the Equipment supplied on hire, which bear the name of Kommand, or any other entity, or any trade marks or trade names used in relation to the Equipment;
  - (f) not reverse engineer the Equipment or decompile any software supplied with the Equipment;
  - (g) ensure that Kommand can, and allow Kommand to, enter at all reasonable times, land or buildings owned or occupied by the Customer to inspect the condition of, monitor, and otherwise enforce Kommand's rights and carry out its obligations in respect of the Equipment;
  - (h) not allow any person to operate (or attempt to operate) the Equipment, except for properly trained, licensed (where applicable) and competent personnel;
  - (i) observe warranties and guidelines given by Kommand and the manufacturer of the Equipment;
  - (j) use the Equipment properly and skilfully in accordance with the manufacturer's manuals and recommendations and Kommand's directions;
  - (k) use best endeavours to use the Equipment in a manner that will minimise damage to the Equipment;
  - (l) comply on time with all of its obligations in connection with the Equipment, including statutes and requirements and orders of government authorities;
  - (m) give Kommand immediately any notice or order received from any government authority about the use or condition of the Equipment; and
  - (n) promptly notify Kommand in writing of loss of, or material damage to, the Equipment (however so caused).

#### **Security/charges**

49. The Customer charges in favour of Kommand all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
50. The Customer charges in favour of Kommand all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
51. The Customer appoints as its duly constituted attorney Kommand company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Kommand may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
52. Where the Customer has previously entered into an agreement with Kommand by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Customer under this Agreement. Kommand may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## **Indemnities**

53. The Customer agrees to indemnify Kommand in respect of all liability, claims, damage, loss, costs and expenses that Kommand may suffer or incur at any time, directly or indirectly, as a result of:
- (a) loss of, or damage to, the Equipment by any cause (including lawful confiscation) while the Equipment is at the Customer's risk;
  - (b) damage to property or death of, or injury to, any person caused directly or indirectly by the Equipment while the Equipment is at the Customer's risk;
  - (c) any claim against Kommand in relation to any incident concerning the Equipment or its use, operation, transportation or storage where such incident occurs while the Equipment is at the Customer's risk;
  - (d) any other thing in relation to which the Customer has assumed the risk or liability under this Agreement; or
  - (e) any default by the Customer in the performance or observance of the Customer's obligations under this Agreement.
54. The Customer's liability to indemnify Kommand will be reduced proportionally to the extent only that:
- (a) any negligent act or omission by Kommand or a breach of Kommand's obligations under this Agreement has contributed to the liability, claim, damage, loss, cost or expense which is the subject of the indemnity; or
  - (b) this Agreement makes Kommand specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of or damage to the Equipment.
55. The Customer's liability to indemnify Kommand is a continuing obligation separate and independent from the Customer's other obligations and survives termination of this Agreement.
56. It is not necessary for Kommand to incur expense or make any payment before enforcing its rights of indemnity conferred by this Agreement.

## **Provision of further information**

57. The Customer undertakes to comply with any reasonable written requests by Kommand to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
58. If the Customer is a corporation (with the exception of a public listed company), it must advise Kommand of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders Kommand may ask for new guarantors to sign a guarantee and indemnity.

## **Corporations**

59. If the Customer is a corporation, the Customer warrants that all of its directors have signed this Agreement and that all of its directors may be required to enter into a guarantee and indemnity with Kommand in relation to the Customer's obligations to Kommand.

## **Trustee capacity**

60. If the Customer is the trustee of a trust (whether disclosed to Kommand or not), the Customer warrants to Kommand that:
- (a) the Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Customer has the right to be reasonably indemnified out of trust assets;
  - (c) the Customer has the power under the trust deed to sign this Agreement; and
  - (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Kommand.
61. The Customer must give Kommand a copy of the trust deed upon request.

## **Partnership**

62. If the Customer enters into this Agreement as partners, the Customer warrants that all of the partners have signed this Agreement and that all of the partners may be required to enter into a guarantee and indemnity with Kommand in relation to the Customer's obligations to Kommand.
63. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising Kommand. In the case of a change of partners, Kommand may ask for new guarantors to sign a guarantee and indemnity.

## **Insolvency**

64. If the Customer becomes insolvent, the Customer remains liable under this Agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this Agreement even if Kommand receives a dividend or payment as a result of the Customer being insolvent.

## **Waiver**

65. A waiver of any provision or breach of this Agreement by Kommand must be made by an authorised officer of Kommand in writing. A waiver of any provision or breach of this Agreement by the Customer must be made by the Customer's authorised officer in writing.

## **Costs**

66. The Customer must pay for its own legal, accounting and business costs and all costs incurred by Kommand relating to any default by the Customer under this Agreement. The Customer must also pay for all stamp duty and other taxes payable on this Agreement (if any).
67. The Customer will pay Kommand costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
68. Subject to clause 69, payments by, or on behalf of, the Customer will be applied by Kommand as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 47 and 67.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 73.
  - (c) Thirdly, in payment of the outstanding invoice(s).

69. To the extent that payments have been allocated to invoices by Kommand in its business records, Kommand may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at Kommand absolute discretion, including in a manner inconsistent with clause 68 herein.

70. Payments allocated (and/or reallocated) under clause 68 and/or 69 will be treated as though they were allocated (and/or reallocated) in the manner determined by Kommand on the date of receipt of payment.

#### **Taxes and duty**

71. The Customer must pay GST on any taxable supply made by Kommand to the Customer under this Agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.

72. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this Agreement; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

Kommand becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay Kommand these additional amounts on 48 hours' written demand.

#### **Interest rates**

73. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum.

#### **Set-off**

74. All payments required to be made by the Customer under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Kommand and the Customer in writing.

75. Any amount due to Kommand from time to time may be deducted from any monies which may be or may become payable to the Customer by Kommand.

#### **Intellectual property**

76. The copyright in all designs, drawings, specifications, software and data (collectively, **Designs**) prepared, compiled and/or supplied by Kommand shall remain in Kommand and the Customer shall not have the right or license to use such Designs without the express written consent of Kommand (except for uses incidental to the hire of the Equipment).

77. All Designs supplied by Kommand shall remain the absolute property of Kommand and no part of any such Designs are to be divulged to any third party without the prior written consent of Kommand.

78. Where any Designs have been supplied by the Customer, the Customer warrants that the use of those Designs does not infringe the intellectual property rights of any third party. Further, the Customer agrees to indemnify Kommand against any claim arising from the use of Designs supplied by the Customer where such Designs infringe or are alleged to infringe the intellectual property rights of any third party.

#### **Limitation of liability**

79. In relation to the supply of Equipment, to the extent permitted by law, Kommand's liability is limited to:

- (a) replacing the Equipment or supplying similar Equipment;
- (b) repairing the Equipment;
- (c) providing the cost for replacing the Equipment or for acquiring equivalent Equipment; or
- (d) providing the cost for having the Equipment repaired.

80. In relation to the supply of services, to the extent permitted by law, Kommand's liability is limited to:

- (a) supplying the services again; or
- (b) providing for the cost of having the services supplied again.

81. Kommand is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Equipment supplied under this Agreement.

82. For the avoidance of any doubt, to the extent permitted by law, Kommand's maximum aggregate liability for all claims relating to the Equipment or this Agreement, whether in contract, tort, in equity, under statute or on any other basis, is limited to:

- (a) in the case of Equipment supplied on hire, an amount equal to the Hire Charge; or
- (b) in the case of Equipment sold under this Agreement, an amount equal to the purchase price of the Equipment.

#### **Miscellaneous**

83. Kommand is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, software or hardware malfunction, acts of God or any other activity beyond Kommand's control.

84. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Kommand by the Customer or the Customer's authorised representative.

85. The Customer further agrees that where Kommand has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

86. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Equipment pursuant to this Agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

## Severance

87.If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

88.If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

## Variation of Agreement

89.The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Kommand at any time by written notice to the Customer. The Customer will be provided with fourteen (14) days to accept the variation(s), failing which the variations may be deemed accepted by Kommand.

90.If the Customer does not agree with the variations proposed by Kommand, they must notify Kommand in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. Kommand and/or the Customer will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the Parties regarding the proposed variations. Absent notice from the Customer, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.

91.Any proposed variation to these terms and conditions by the Customer must be requested in writing. Kommand may refuse any such request without providing reasons either orally or in writing.

92.Variations requested by the Customer will only be binding upon Kommand if they are accepted in writing.

## Consent to register

93.The Customer hereby consents to Kommand recording the details of this Agreement on the PPSR and agrees to do all things necessary and reasonably required by Kommand to effect such registration.

94.The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPSR.

## Jurisdiction

95.The Customer acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.

96.The Customer acknowledges and agrees that any contract for the supply of Equipment on hire between Kommand and the Customer is formed at the address of Kommand.

97.The Parties to this agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

## Entire agreement

98.This Agreement constitutes the entire agreement between the Parties relating in any way to its subject matter, unless agreed to otherwise by Kommand and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a Party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

99.Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and Kommand, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

100.For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and Kommand will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by Kommand.

## Privacy Act

101.The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.