
Gulfbay Enterprise Limited T/A Walkie Talkie – Terms & Conditions of Trade

1. Definitions

- 1.1 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “**Walkie Talkie**” means Gulfbay Enterprise Limited T/A Walkie Talkie, its successors and assigns or any person acting on behalf of and with the authority of Gulfbay Enterprise Limited T/A Walkie Talkie.
- 1.3 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Walkie Talkie 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 partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “**Goods**” means all Goods (including but not limited to, machines, consumables and sundries supplied for the purposes of sale by Walkie Talkie to the Client (and where the context so permits shall include any supply of Services and/or Equipment as hereinafter defined) and are as described on the invoices, quotation, request to supply Goods or any other forms as provided by Walkie Talkie to the Client.).
- 1.5 “**Services**” shall mean all Services undertaken by Walkie Talkie 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 “**Equipment**” means all Equipment including any accessories supplied on hire by Walkie Talkie 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 work authorisation form provided by Walkie Talkie to the Client.
- 1.7 “**Minimum Hire Period**” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Walkie Talkie to the Client.
- 1.8 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, 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.
- 1.9 “**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 using Walkie Talkie’s 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 making enquiries via the website.**
- 1.10 “**Price**” means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between Walkie Talkie and the Client in accordance with clause 6 below.

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/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with Walkie Talkie and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Walkie Talkie reserves the right to refuse Delivery.
- 2.6 The Client acknowledges and agrees that:
- (a) Walkie Talkie shall not be liable for any lost or corrupted data arising from any reason (including but not limited to, third party service providers etc) other than the negligence, fault or omission of Walkie Talkie;
 - (b) where the Goods/Equipment are provided to the Client on a trial period are then subsequently returned in an unusable or not in a restock able condition, then Walkie Talkie reserves the right to charge the Client for the full replacement cost of the Goods/Equipment; and
 - (c) in the event that the Goods/Equipment are to be serviced by Walkie Talkie, then the Client accepts that they shall be responsible for any associated freight costs.
- 2.7 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.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Walkie Talkie 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 Walkie Talkie 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 Walkie Talkie 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 Walkie Talkie; 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 Walkie Talkie 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

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number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Walkie Talkie as a result of the Client's failure to comply with this clause.

5. On-Line Ordering

- 5.1 The Client acknowledges and agrees that:
- (a) Walkie Talkie 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 Walkie Talkie;
 - (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 Walkie Talkie cannot warrant against delays or errors in transmitting data between the Client and Walkie Talkie including orders, and you agree that to the maximum extent permitted by law, Walkie Talkie 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;
 - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Walkie Talkie and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences; and
 - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, Walkie Talkie 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 Walkie Talkie 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 Walkie Talkie's business, or violated these terms and conditions.

6. Price and Payment

- 6.1 At Walkie Talkie's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Walkie Talkie to the Client; or
 - (b) Walkie Talkie's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Walkie Talkie reserves the right to change the Price if a variation to Walkie Talkie's quotation or hire agreement is requested. Any variation from the plan of scheduled works or specifications of the Goods and/or Equipment (including, but not limited to, any variation as a result of delays caused in the procurement of products or parts, variation in freight costs, or as a result of variations in currency exchange rates or as a result in increases to Walkie Talkie in the cost of materials or labour) will be charged for on the basis of Walkie Talkie's quotation, and will be detailed in writing, and shown as variations on Walkie Talkie's invoice. The Client shall be required to respond to any variation submitted by Walkie Talkie within ten (10) working days. Failure to do so will entitle Walkie Talkie 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 Walkie Talkie's sole discretion, a non-refundable deposit may be required.
- 6.4 Clients are required to pay hire charges for the on-going use of the Equipment. The charges payable for the duration of the Hire Period is stipulated and is due and payable as per Walkie Talkie's quotation. Walkie Talkie may adjust the Price from time to time (as per clause 6.2) upon one (1) month's written notice to the Client.
- 6.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Walkie Talkie, which may be:
- (a) on or before Delivery of the Goods/Equipment;
 - (b) by way of instalments/progress payments in accordance with Walkie Talkie's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (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 Walkie Talkie.
- 6.6 Payment may be made by electronic/on-line banking, PayPal, credit card along with acceptance of Zip and Oxipay (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Walkie Talkie.
- 6.7 Walkie Talkie may in its discretion allocate any payment received from the Client towards any invoice that Walkie Talkie determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Walkie Talkie may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Walkie Talkie, payment will be deemed to be allocated in such manner as preserves the maximum value of Walkie Talkie's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 6.8 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 Walkie Talkie nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Walkie Talkie an amount equal to any GST Walkie Talkie must pay for any supply by Walkie Talkie under this or any other agreement for the sale of the Goods/hire of the Equipment. 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. Credit Card Information

- 7.1 Walkie Talkie will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by Walkie Talkie;
 - (b) not disclose the Client's credit card details to any third party;
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 19) or where required by law.
- 7.2 The Client expressly agrees that, if pursuant to this Contract, there are:

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- (a) any unpaid charges;
- (b) other amounts due and outstanding by the Client; and
- (c) any Equipment (or any part of them) supplied on loan that are lost or damaged.

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

8. Delivery of Goods/Equipment

- 8.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Walkie Talkie's address; or
 - (b) Walkie Talkie (or Walkie Talkie's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 8.2 At Walkie Talkie's sole discretion, the cost of Delivery is in addition to the Price.
- 8.3 Walkie Talkie may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by Walkie Talkie for Delivery of the Goods/Equipment is an estimate only. The Client must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. Walkie Talkie will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then Walkie Talkie shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Risk to Goods

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Walkie Talkie is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Walkie Talkie is sufficient evidence of Walkie Talkie's rights to receive the insurance proceeds without the need for any person dealing with Walkie Talkie to make further enquiries.
- 9.3 If the Client requests Walkie Talkie to leave Goods outside Walkie Talkie'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.

10. Title to Goods

- 10.1 Walkie Talkie and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Walkie Talkie all amounts owing to Walkie Talkie; and
 - (b) the Client has met all of its other obligations to Walkie Talkie.
- 10.2 Receipt by Walkie Talkie 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.
- 10.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to Walkie Talkie on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Walkie Talkie and must pay to Walkie Talkie 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 Walkie Talkie and must pay or deliver the proceeds to Walkie Talkie 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 Walkie Talkie and must sell, dispose of or return the resulting product to Walkie Talkie as it so directs;
 - (e) the Client irrevocably authorises Walkie Talkie to enter any premises where Walkie Talkie believes the Goods are kept and recover possession of the Goods;
 - (f) Walkie Talkie 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 Walkie Talkie; and
 - (h) Walkie Talkie may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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/Equipment and/or collateral (account) – being a monetary obligation of the Client to Walkie Talkie for Services – that have previously been supplied and that will be supplied in the future by Walkie Talkie 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 Walkie Talkie may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Walkie Talkie for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;

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- (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 Walkie Talkie; and
- (d) immediately advise Walkie Talkie of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

- 11.3 Walkie Talkie 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, and 131 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by Walkie Talkie, 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 Walkie Talkie under clauses 11.1 to 11.5.
- 11.7 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 11 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.

12. Security and Charge

- 12.1 In consideration of Walkie Talkie 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).
- 12.2 The Client indemnifies Walkie Talkie from and against all Walkie Talkie's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Walkie Talkie's rights under this clause.
- 12.3 The Client irrevocably appoints Walkie Talkie and each director of Walkie Talkie 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. Consumer Guarantees Act 1993

- 13.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 ("**CGA**") in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

14. Defects and Returns

- 14.1 The Client shall inspect the Goods/Equipment on Delivery and shall within ten (10) days of Delivery (time being of the essence) notify Walkie Talkie of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Walkie Talkie 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 Walkie Talkie has agreed in writing that the Client is entitled to reject, Walkie Talkie's liability is limited to either (at Walkie Talkie's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 14.2 Returns of Goods will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 14.1;
 - (b) Walkie Talkie has agreed in writing to accept the return of the Goods;
 - (c) the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date;
 - (d) Walkie Talkie will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.3 Walkie Talkie may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 14.4 Returned goods may (at Walkie Talkie's sole discretion), incur restocking and handling fees.
- 14.5 Subject to clause 14.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

15. Warranty

- 15.1 For Goods not manufactured by Walkie Talkie, the warranty shall be the current warranty provided by the manufacturer of the Goods. Walkie Talkie 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.

16. Intellectual Property

- 16.1 Where Walkie Talkie has designed (including but not limited to Walkie Talkie's dry bags etc), drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Walkie Talkie. Under no circumstances may such designs, drawings and documents be used without the express written approval of Walkie Talkie.
- 16.2 The Client warrants that all designs, specifications or instructions given to Walkie Talkie will not cause Walkie Talkie to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Walkie Talkie against any action taken by a third party against Walkie Talkie in respect of any such infringement.
- 16.3 The Client agrees that Walkie Talkie may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Walkie Talkie has created for the Client.

17. Default and Consequences of Default

- 17.1 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 Walkie Talkie's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 17.2 If the Client owes Walkie Talkie any money the Client shall indemnify Walkie Talkie from and against all costs and disbursements incurred by Walkie Talkie in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Walkie Talkie's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Walkie Talkie may have under this Contract, if a Client has made payment to Walkie Talkie, 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 Walkie Talkie under this clause 17, 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.
- 17.4 Without prejudice to Walkie Talkie's other remedies at law Walkie Talkie shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Walkie Talkie shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Walkie Talkie becomes overdue, or in Walkie Talkie'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 Walkie Talkie;
 - (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.

18. Cancellation

- 18.1 Without prejudice to any other remedies Walkie Talkie may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Walkie Talkie may suspend or terminate the supply of Goods/Equipment to the Client. Walkie Talkie will not be liable to the Client for any loss or damage the Client suffers because Walkie Talkie has exercised its rights under this clause.
- 18.2 Walkie Talkie 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 Walkie Talkie shall repay to the Client any money paid by the Client for the Goods/Equipment. Walkie Talkie shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event of the premature termination of this Contract (including by notification from the Client, (at least thirty (30) days prior to the expiration date of the Hire Period), or as a result of default, but excluding any breach or termination of this Contract by Walkie Talkie):
- (a) the Client shall be responsible for the immediate payment of the following sums:
 - (i) all monies due and payable up to the date of termination, noting applicable rates may change if the hire agreement term is shorter than that noted in the quotation; and
 - (ii) all other sums owing by the Client under this Contract (or any other Contract with the Client) as a result of the default and termination of this Contract, including consequential damages and any and all loss of profits, costs, charges and expenses incurred by Walkie Talkie in connection with (and resulting from) the premature termination of this Contract, which shall be calculated at a minimum of thirty percent (30%) of the remainder of the Price under this Contract where a Hire Period applies.
- 18.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by Walkie Talkie is Personal Information as defined and referred to in clause 19.3 and therefore considered confidential. Walkie Talkie 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" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Walkie Talkie acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Walkie Talkie that may result in serious harm to the Client, Walkie Talkie 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.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Walkie Talkie in respect of Cookies where the Client utilises Walkie Talkie's website to make enquiries. Walkie Talkie 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 Walkie Talkie when Walkie Talkie sends an email to the Client, so Walkie Talkie may collect and review that information ("collectively Personal Information")
- If the Client consents to Walkie Talkie's use of Cookies on Walkie Talkie's website and later wishes to withdraw that consent, the Client may manage and control Walkie Talkie's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Client authorises Walkie Talkie or Walkie Talkie'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 Walkie Talkie from the Client directly or obtained by Walkie Talkie 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.

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- 19.4 Where the Client is an individual the authorities under clause 19.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.5 The Client shall have the right to request (by e-mail) from Walkie Talkie, a copy of the Personal Information about the Client retained by Walkie Talkie and the right to request that Walkie Talkie correct any incorrect Personal Information.
- 19.6 Walkie Talkie will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.7 The Client can make a privacy complaint by contacting Walkie Talkie via e-mail. Walkie Talkie will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

20. Service of Notices

- 20.1 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.
- 20.2 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.

21. Trusts

- 21.1 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 Walkie Talkie may have notice of the Trust, the Client covenants with Walkie Talkie 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;
 - (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 Walkie Talkie (Walkie Talkie 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.

22. General

- 22.1 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.
- 22.2 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 Christchurch Courts of New Zealand.
- 22.3 Except to the extent permitted by law "CGA", Walkie Talkie 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 Walkie Talkie of these terms and conditions (alternatively Walkie Talkie's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 22.4 Walkie Talkie may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of Walkie Talkie.
- 22.6 Walkie Talkie 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 Walkie Talkie's sub-contractors without the authority of Walkie Talkie.
- 22.7 The Client agrees that Walkie Talkie may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 Walkie Talkie to provide Goods/Equipment to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 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.

Additional Terms & Conditions Applicable to Hire Only

23. Charges/Hire Period

- 23.1 Hire charges shall commence from the time the Equipment is collected by the Client from Walkie Talkie's premises and will continue until the return of the Equipment to Walkie Talkie's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 23.2 Hire charges shall be paid on a monthly basis, as specified on the hire agreement, the first payment falling due on the date Walkie Talkie accepted the agreement, with subsequent payments due on the same date in each monthly period. To terminate the hire on, or after, the expiry of the Hire Period, the Client must give Walkie Talkie not less than thirty (30) days' notice of termination. The hire will then terminate

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on the last day of the notice period. If the Client does not terminate the hire at the end of the Hire Period, payments will continue at the same amount and frequency until notice is received.

- 23.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 23.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Walkie Talkie confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Walkie Talkie immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

24. Risk to Equipment

- 24.1 Walkie Talkie retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 24.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Walkie Talkie 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.
- 24.3 The Client will insure, or self-insure, Walkie Talkie's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 24.4 The Client accepts full responsibility for and shall keep Walkie Talkie indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

25. Title to Equipment

- 25.1 The Equipment is and will at all times remain the absolute property of Walkie Talkie.
- 25.2 If the Client fails to return the Equipment to Walkie Talkie then Walkie Talkie or Walkie Talkie'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.
- 25.3 The Client is not authorised to pledge Walkie Talkie's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

26. Client's Responsibilities

- 26.1 The Client shall:
- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (b) notify Walkie Talkie immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (d) maintain the Equipment as is required by Walkie Talkie;
 - (e) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Walkie Talkie or posted on the Equipment;
 - (f) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use;
 - (g) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Walkie Talkie; and
 - (h) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment.
- 26.2 The Client shall not:
- (a) 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;
 - (b) employ the Equipment solely for its intended purpose and shall not permit the Equipment of any part thereof to be used by any other party for any other purpose;
 - (c) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 26.3 Immediately on request by Walkie Talkie the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Walkie Talkie;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in Walkie Talkie's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
 - (d) the cost of consumables provided by Walkie Talkie and used by the Client;
 - (e) any:
 - (i) lost hire fees Walkie Talkie would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by Walkie Talkie in picking up and returning the Equipment to Walkie Talkie's premises if the Client does not return the Equipment to Walkie Talkie's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - (iii) insurance excess payable in relation to a claim made by either the Client or Walkie Talkie in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Walkie Talkie's.