



**John barry sales**



# Credit Account Application

For the purposes of this account application "PANAVISION" means PANALUX Pty Limited (ACN 074 457 640) (ABN 52 074 457 640), PANAVISION Australia Pty LTD (ACN 000 941 533 & ABN 45 000 941 533) PANALUX Ltd & PANAVISION NZ Ltd GST NO. 18-549-190

## Details of Applicant

Name of Applicant			ACN
Trading Name (if any)			ABN
Date Business Commenced			Business Registration No
Nature of Business/Main Business Activity			Postcode
Postal Address			
Registered Office Address			Postcode
Telephone Number	Fax Number	Mobile Number	
E-mail Address			Web Address
Contacts – Booking Officer/Authorised Officer			Is Your Order Number Needed? Yes <input type="checkbox"/> No <input type="checkbox"/>
Accounts Payable Officer			Number of Employees
Structure (please tick):	Public Co <input type="checkbox"/>	Proprietary Co <input type="checkbox"/>	Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/>

## Details of Directors/Partners

1) Name in Full	2) Name in Full
Position/Occupation	Position/Occupation
Residential Address	Residential Address
Postcode	Postcode

## Payment Method

Cash/Credit Card  Go to Parts A & B

30 day Trading Account  Go to Parts A, C & D

## PART A - ALL Applicants to Sign

The Applicant and the Directors of the Applicant agree that all equipment hired by the Applicant from PANAVISION will be hired on the terms of PANAVISION Conditions of Business attached, unless for any hire an alternative written agreement is executed by the Applicant.

The Applicant acknowledges that he/she has received the PANAVISION Conditions of Business prior to his/her signing this application.

The Applicant hereby warrants that he/she has read and fully understands the nature and effect of the PANAVISION Conditions of Business and confirms they have authority to sign on behalf of and to bind the Applicant;

**Signed** on behalf of the Applicant by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position Held

\_\_\_\_\_  
Date

**PART B - Cash / Credit Card Applicants Only - Three Forms of Identification Including One Photo:**

Identification Type e.g Medicare card / drivers licence / passport

1) _____	Account No _____	Expiry date _____
2) _____	Account No _____	Expiry date _____
3) _____	Account No _____	Expiry date _____

**PART C - Trade References Must Be Completed for 30 Day Trading Account Applications**

Trade References (Major Suppliers)

1) _____	Telephone No _____	Account No _____
2) _____	Telephone No _____	Account No _____
3) _____	Telephone No _____	Account No _____

Anticipated monthly purchases \_\_\_\_\_

The company has the right to withdraw credit or vary the customer's credit limit at any time and without reason.

**PART D - The Following Guarantee Must Be Completed For 30 Day Trading Account Applications:**

I/We being Directors of the Customer (referred to as the Applicant above) request PANAVISION to enter into hire agreements from time to time with the Customer (Hire Contracts), and in consideration of PANAVISION so doing I/We hereby jointly and severally unconditionally and irrevocably guarantee to PANAVISION the payment of all moneys from time to time owing, and due satisfaction by the Customer of all its obligations under this credit application or any Hire Agreements. I/We shall be principal obligors to PANAVISION, and I/We agree that this guarantee shall not be in any way affected by PANAVISION'S granting time or other indulgence to the Customer and that this guarantee will bind me/us to make payment of any amount outstanding under this credit application or any such Hire Agreement. This guarantee is a continuing guarantee, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other guarantee or security held by you at any time."

I/We confirm that entry into this guarantee is at my/our own request, freely and voluntarily given with full knowledge and understanding of the contents of the guarantee and the circumstances under which the liabilities in the guarantee have been undertaken, and I/We accept full responsibility for this choice.

**DECLARATION:**

_____	_____	_____	_____
Signature	Print Name	Position Held	Date

In accordance with the Privacy Act (1988), I/We authorise PANAVISION and its related bodies corporate (as defined in the Corporations Law), to exchange with credit providers, credit reporting agencies and, credit providers named in reports from those agencies, information about my/our personal credit, commercial activities or commercial credit worthiness. I/We also state the details provided above are true and correct.

# PANAVISION CONDITIONS OF BUSINESS

## 1. INTERPRETATION

In these Conditions of Business, unless the context otherwise requires:

1.1. **Actual Hire Period** means the actual period during which the Customer has possession of the Equipment.

1.2. **Agreed Hire Period** means the hire period for possession of the Equipment agreed, whether orally or in writing, between the Company and the Customer.

1.3. **CCA** means the Australian Competition and Consumer Act 2010 (Cth).

1.4. **CGA** means the New Zealand Consumer Guarantees Act 1993.

1.5. **Company** means either Panavision Asia Pacific Pty Limited (Australia), Panavision (1998) Limited (New Zealand), Panavision Australia Pty Limited (Australia), John Barry Group Pty Limited (Australia), PANALUX PTY LIMITED (Australia), Panavision NZ Limited (New Zealand), or PANALUX LIMITED (New Zealand), as identified in the relevant Order.

1.6. **Contract** means the agreement between the Company and the Customer for the hiring of Equipment or the sale and purchase of Goods, formed in accordance with Section 2.

1.7. **Customer** means the person hiring Equipment or purchasing Goods from the Company.

1.8. **Equipment** means cinematography equipment, lighting equipment, related electrical distribution equipment and all other related equipment, cranes, remote systems, generators and accessories or vehicles available for hire from the Company (includes any replacements or substitutes to such Equipment).

1.9. **Goods** means consumables or other goods sold by the Company to the Customer.

1.10. **Gross Negligence** means the intentional failure to perform a duty in reckless disregard of the consequences.

1.11. **GST** means any goods and services tax or value added tax, and any other similar turnover, sales or purchase tax, duty or levy, including as provided for by the Australian *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the New Zealand *Goods and Services Tax Act 1985* (NZ), or by any applicable analogous legislation in any jurisdiction from time to time.

1.12. **Order** means the written documents (which may be emails) evidencing an order for the hire of Equipment or the purchase of Goods by the Customer from the Company.

1.13. **PPSA** means the New Zealand Personal Property Securities Act 1999.

## 2. FORMATION OF CONTRACT

2.1. The Contract between the Customer and the Company comprises the Order and these Conditions of Business.

2.2. To the extent of any conflict or inconsistency between any terms of the Contract, the order of priority for interpretation is the Order followed by these Conditions of Business.

## 3. HIRE OF EQUIPMENT

3.1. **Application**. This Section 3 applies where the Contract includes the hire of Equipment by the Customer from the Company, whether or not such hire is made in conjunction with the sale and purchase of Goods.

3.2. **Delivery**. The Customer is responsible for the collection and return of the Equipment, except where prior alternate arrangements are made with the Company. The Company has discretion as to the mode of delivery and the Customer must, at all times, bear the risk and the cost of delivery, unless otherwise agreed in writing by the Company. Delivery (including for the purposes of risk of loss) of the Equipment to the Customer is deemed to take place when the Equipment is placed on the vehicle or with a carrier which is to take it from the Company's place of business to the Customer's specified location (**Delivery**). With each Delivery, the Order will itemise the Equipment delivered. Unless the Company receives written notice to the contrary from the Customer within 24 hours of Delivery, the Order is deemed to be conclusive evidence that the listed Equipment was delivered in good working order.

3.3. **Hiring Fee**. The Customer must pay the Company a hiring fee (the **Hiring Fee**) for the hiring of the Equipment in accordance with the Order. The minimum Hiring Fee for interstate use of Equipment is two days and for overseas use is one week.

3.4. **Calculation**. The Hiring Fee for Equipment is calculated from Delivery until the Equipment is returned to the Company's place of business and accepted by the Company's staff (**Return**). If the Customer fails to Return the Equipment on the expiry of the Agreed Hire Period, the Customer is liable for additional fees at the full daily rental rates set out in the Order for each day until the Equipment is returned. Unless otherwise agreed by the Company, cancellation of booked or reserved Equipment within 24 hours of the commencement of the Agreed Hire Period will incur a cancellation charge up to a maximum of 100% of the Hiring Fee set out in the Order with respect to the applicable Equipment.

3.5. **Return**. The Customer must return the Equipment at the Customer's expense to the Company's place of business in the same condition as when received by the Customer, subject to reasonable wear and tear. The Equipment is at the Customer's risk from Delivery until Return, except that acceptance of Equipment by the Company's staff upon Return does not release the Customer from responsibility for loss or damage to Equipment pursuant to these Conditions of Business.

3.6. **Use of Equipment**. The Customer must:

3.6.1. not use the Equipment for any purpose other than image capture, lighting and related electrical distribution of the Customer's project and related matters (e.g., as tests, titles, added scenes, retakes and trailers);

3.6.2. not lend, sublet, pledge, or otherwise dispose of or encumber the Equipment, or permit anyone other than the Customer, persons under the Customer's direction and control (having appropriate qualifications and experience), or the Company, to have possession of, use, examine or evaluate the Equipment;

3.6.3. not modify or disassemble the Equipment, except for the purpose of normal cleaning and maintenance;

3.6.4. not attach anything to the Equipment by any means that causes damage to the Equipment;

3.6.5. take all reasonable precautions to avoid loss or damage to the Equipment during the Actual Hire Period;

3.6.6. ensure that any vehicle that is supplied to the Customer by the Company or other vehicle used to transport the Equipment will only be driven by persons with an appropriate and current licence (the written details of which must be provided to the Company upon request) and that such vehicles will be used in accordance with all laws governing their use;

3.6.7. advise the Company of any fault in the Equipment, within 24 hours of the Customer's discovery of such fault; and

3.6.8. not, without the prior written consent of the Company, use the Equipment on any abnormal or hazardous assignment or transport the Equipment from the ground other than on a regular scheduled flight by a reputable airline.

3.7. **Inspection; Recovery**. The Company has the right to inspect the Equipment or observe its use provided that the Company has given the Customer not less than 24 hours notice and such inspection is conducted during normal business hours at the Company's own expense and does not interfere with the production of the Customer's project. The Customer further acknowledges that the Company may enter into or upon any such premises where the Equipment may be in order to remove the Equipment, without prejudice to the rights of the Company to recover from the Customer any monies due hereunder or any damages for breach hereof, and the Customer indemnifies the Company in respect of any claims, damages or expenses arising out of any action taken under this Section.

3.8. **Maintenance and Repairs of Equipment**.

3.8.1. Where the Equipment operates at a voltage below or equal to 32 Volts (whether AC or DC), normal cleaning of the Equipment, (including cleaning and oiling movements, cleaning lenses and filters, and general cleaning, replacing and cleaning ground glass, and basic troubleshooting including swapping fuses and removable circuit-boards (collectively, **Normal Cleaning and Maintenance**)) must be done by the Customer at its cost, but only by persons who have been provided specific maintenance and service instruction and authorization by the Company. If the Equipment operates above 32 Volts, Normal Cleaning and Maintenance must be carried out by the Customer at its cost by suitably qualified persons approved in advance by the Company. If the required repairs exceed Normal Cleaning and Maintenance, the

Company must make such repairs, provided that the Customer returns such Equipment to the Company's place of business unless the Company determines that such repairs may be carried out at the location where the Equipment is being used, in which case the Company may send a technician to such location for that purpose at the Customer's request and sole cost and expense.

3.8.2. The cost of repairs or replacement resulting from reasonable wear and tear, or from any defect in the Equipment will not be charged to the Customer; provided, however, that unless otherwise agreed to by the Company, the Customer is responsible for all transportation costs for sending the Equipment back to the Company's place of business and for returning the Equipment (including any replacement thereof) back to the Customer's specified location. The Hiring Fee for Equipment during the period it is being repaired or until it is replaced (**Repair Rent**) as a result of reasonable wear and tear or defect in the Equipment will not be charged to the Customer; provided, however, that the Customer must still bear the risk of loss during such period. Both the Repair Rent and the cost of repairs or replacement resulting from any other cause, including, misuse, accident or abuse of the Equipment, will be charged to the Customer.

3.9. Ownership. The Customer's rights in relation to the Equipment are as a hirer only and nothing herein is to be construed as conveying to Customer any right, title or interest, other than a temporary leasehold interest, in or to any Equipment or in or to any other property of the Company, including the Company's intellectual property. The Company may, but is not required to, identify the Equipment to indicate the Company's ownership by nameplate or other means, and the Customer agrees not to remove or deface such identification.

3.10. Loss, Damage, Theft. If Equipment is lost, stolen, missing, destroyed, or damaged beyond repair while at the risk of the Customer, the Customer is liable for and agrees to compensate the Company for the greater of replacement cost (without deduction for depreciation) or the insurance value prescribed on the Company's schedule of insurance values, which is available upon request and subject to update from time to time. Further, the Customer agrees to compensate the Company for the Hiring Fee for the Equipment until the Equipment is replaced. Without limiting the Customer's obligation with respect to hired vehicles, if the Customer hires a vehicle, the Customer is responsible for all damage to such vehicle, including to tyres, windscreens and windows.

3.11. Insurance. The Customer must, at its expense, obtain and maintain in full force and effect insurance, to the satisfaction of the Company, covering any and all liability, claims, demands, actions, causes of action, loss, costs, damage and expenses arising out of or based upon the use or possession of the Equipment or the present or future fitness, quality, design, condition, repair, merchantability, functioning, performance or malfunctioning of the Equipment, or its material or workmanship, no matter how caused or occasioned. Such insurance will be written by a reputable insurance company acceptable to the Company (the Customer's insurers must be the primary insurers of the Equipment during the Actual Hire Period and coverage must be on a non-contributor basis), and must include an extension to include hire charges incurred on lost or damaged Equipment whilst it is being replaced or repaired in accordance with Section 3.10. The Customer must, unless notified in writing to the contrary by the Company, insure the Equipment with the Company as a co-insured (and loss payee) under all policies of insurance relating to the use or possession of the Equipment. The Customer agrees to inform its nominated insurer where any Equipment may be subjected to abnormal or hazardous conditions or possible damage by foreign materials such as salt, water, dust or sand so that full and appropriate insurance cover may be effected.

3.12. Insurance Certificates. Subject to Section 3.13, prior to Delivery of the Equipment, the Customer must provide to the Company valid certificates of insurance in accordance with Section 3.11 and for the values requested by the Company and must provide at least 30 days prior notice of any proposed modification, alteration or cancellation of any such insurance. Notwithstanding anything else in these Conditions of Business, the Customer remains liable to the Company pursuant to the provisions of Section 3.10 of these Conditions of Business and the Company may enforce its remedies hereunder directly against the Customer without proceeding against the insurer.

3.13. Company Risk Option. Subject to Section 3.14, if, at the request of the Customer, the Company agrees in writing, prior to Delivery, to accept responsibility for loss or damage to the Equipment, the Customer; (a) shall pay to the Company a damage waiver fee as specified in the Order, and (b) unless otherwise specified in the Order, acknowledges that in the event of loss of or damage to the Equipment, the Customer shall pay to the Company on demand, in relation to any hire of Equipment in New Zealand, the first NZ\$2,500.00 plus GST in relation to each and every

claim, and in relation to any other hire, the first A\$2,000.00 plus GST in relation to each and every claim.

3.14. Certain Exclusions. Any such acceptance of risk by the Company pursuant to Section 3.13 expressly excludes, and the Customer remains liable for, loss or damage or liability of any kind directly or indirectly caused or contributed to or arising from:

- 3.14.1. misuse, mechanical or electrical derangement;
- 3.14.2. exposure to salt, exposure to water, exposure to dust or sand;
- 3.14.3. leaving the Equipment in an unattended vehicle whether locked or unlocked;
- 3.14.4. war, invasion, act of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power;
- 3.14.5. ionising radiations or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from the combustion of fuel;
- 3.14.6. the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 3.14.7. confiscation by customs or other authorities.

In addition, the Customer remains liable for any loss or damage to radio telephones or walkie-talkies and electrical globes.

3.15. Loss Procedures. In the event of loss or damage of any kind to the Equipment, the Customer must:

- 3.15.1. immediately notify the Company (and the Police where appropriate) and take all practicable steps towards discovery and recovery; and
- 3.15.2. as soon as practicable, provide the Company with a full written report of the circumstances of the loss or damage and furnish the Company with any particulars or evidence as may reasonably be required by the Company.

3.16. Stored Data. If any Equipment is returned to the Company at the end of the Actual Hire Period still containing any of the Customer's visual or audiovisual content or other data, the Customer acknowledges that in the ordinary course of its business the Company will clear any and all such content or data from the Equipment immediately following the end of the Actual Hire Period in order to maintain and prepare the Equipment and systems for subsequent hire. The Company has no obligation or liability for taking, or failing to take, any action with respect to such content or data, including, maintaining or safeguarding such content or its confidentiality or delivering it to the Customer. The Customer is solely responsible for protection and back-up of the Customer's data. The Company has no liability or responsibility, whether direct, indirect, consequential or otherwise, for any loss or damage, including that the Company is not liable or responsible for recreating all or any portion of any picture, original artwork or design.

#### 4. SALE OF GOODS

4.1. Application. This Section 4 applies where the Contract includes the sale of Goods by the Company to the Customer, whether or not such sale is made in conjunction with the hire of Equipment.

4.2. Estimates. Estimates given by the Company are not offers. The Company reserves the right to correct any obvious errors or omissions of any kind in offers, quotations, order confirmations, contracts, invoices, etc., whether technical, stenographic or otherwise.

4.3. Orders: Orders cannot be cancelled by the Customer without the Company's written consent.

4.4. Delivery and Delays. The Company has discretion as to the mode of delivery and the Customer must, at all times, bear the risk and the cost of delivery, unless otherwise agreed in writing by the Company. Delivery (including for the purposes of risk of loss) of the Equipment to the Customer is deemed to take place when the Goods are placed on the vehicle or with a carrier which is to take it from the Company's place of business to the Customer's specified location. The Company will endeavour to meet agreed delivery dates but will not be liable for delays in delivery. The Customer must accept and pay for the Goods notwithstanding any delay in delivery. If the Customer fails or refuses to accept delivery at an agreed time, delivery will be considered to have been effected in any event.

4.5. Return of Goods. Any Goods procured by the Company at the Customer's request are not returnable. The Company may, at its sole

discretion, accept Goods for return. The Company reserves the right to charge a re-stocking fee on any returned Goods.

4.6. **Retention of title.** Notwithstanding delivery of the Goods or their installation, property in the Goods remains with the Company until the Customer has discharged all indebtedness to the Company. The Customer must clearly identify the Goods, whether as separate chattels or as components, as the property of the Company. If the Customer wishes to resell any Goods before ownership passes to it, the Customer may sell the Goods only by way of a good faith sale in the ordinary course of business and as an agent and bailee for the Company, but the Customer must not represent to any other person that it is acting for, or has authority to bind, the Company. The entire proceeds arising from the sale of such Goods are to be held on trust for the Company (including any resulting goods, money, accounts receivable, chattel paper, intangibles, negotiable instruments, documents of title or investment securities). Until such time as title to the Goods passes to the Customer, the Customer hereby irrevocably grants to the Company, its agents and employees, an unrestricted right and license, subject to the New Zealand *Credit (Repossession) Act 1997* (if applicable), without notice, to enter the premises occupied by the Customer to identify and remove any of the Goods the property of the Company in accordance with the Contract, (including any Goods that have become an accession under the PPSA), without in any way being liable to the Customer or any person claiming through the Customer (whether for damage caused in doing so or otherwise). The Company has the right to sell any such Goods removed and apply the proceeds of sale in reduction of any amount owing (or retain any of the Goods for its own benefit) and is not liable for any loss occasioned thereby.

## 5. PAYMENT; TAXES

5.1. **Payment.** The Company will provide the Customer with invoices with respect to the hire of Equipment and the purchase of Goods. Generally, all invoices must be paid in full by the Customer within thirty (30) days of the date of the invoice. However, the Company expressly reserves the right to require earlier payment, which may require the Customer to pay the Company in cash immediately upon confirmation of order or Delivery if the Company so notifies the Customer.

5.2. **Interest.** If a Customer does not make a payment when due, the Company may charge interest at the rate of the lesser of 1½% per month and the maximum amount permitted by law, and the parties agree that such default interest is not a penalty but is a true measure of the damages incurred by the Company as a result of late payment by the Customer. Payments received from the Customer will be credited first against any default interest and secondly against payment of any outstanding invoices. The Customer is liable for all out-of-pocket costs incurred by the Company in collecting such amounts, including reasonable outside legal costs and disbursements on a solicitor-client basis.

5.3. **Taxes and Costs.** The Customer is solely responsible for any and all applicable taxes (including GST which is payable by the Customer to the Company in addition to any other payments), transportation charges, duties, levies, broker fees, bond, and all other costs arising out of or resulting from the Customer's hire of Equipment or purchase of Goods.

5.4. **Voided Payments.** Any payment made by or on behalf of a Customer which is later voided by the application of any statutory provision is deemed not to discharge the Customer's obligations to the Company and, in such event the parties are to be restored to rights and obligations which each respectively would have had if the payment had not been made.

## 6. REGISTRATION OF SECURITY INTEREST

6.1. At the Company's request, the Customer must promptly execute any documents and do anything required to register the Company's security interest in the Equipment or the Goods under applicable legislation (including the "security interest" granted to the Company under Section 6.2.1).

6.2. To secure payment of all amounts owing to the Company by the Customer and the performance of all other obligations of the Customer under the Contract, in relation to any supply of Goods in New Zealand or Goods to be located in New Zealand, until ownership of the Goods passes to the Customer, and in relation to any hire of Equipment in New Zealand or Equipment to be located in New Zealand during the Agreed Hire Period or Actual Hire Period which constitutes a "security interest" (which for the purposes of this Section 6.2 is as defined in section 17 of the PPSA), to the extent applicable to such hire, the Customer:

6.2.1. grants to the Company a security interest in the Goods or Equipment;

6.2.2. must keep full and complete records of the Goods and Equipment;

6.2.3. must immediately return the Goods and Equipment if requested to do so by the Company following non-payment of any amount owing by the Customer to the Company or non-fulfilment of any other obligation of the Customer to the Company, without limiting any other right the Company may have;

6.2.4. gives the Company the right to inspect the Goods and Equipment or any part of them at all reasonable times;

6.2.5. must not change its name, address or contact details without providing the Company with prior written notice;

6.2.6. waives its right:

(a) to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Goods;

(b) to receive any notice that the Company intends to sell the Goods or to retain the Goods on enforcement of the security interest granted to the Company under the Contract;

(c) to object to a Company proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Company; and

(d) where any Goods or Equipment becomes an accession, as defined in the PPSA, to not have any goods damaged when the Company removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession, under the PPSA;

6.2.7. must not give to the Company a written demand, or allow any other person to give to the Company a written demand, requiring the Company to register a financing change statement or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA in relation to the Goods or Equipment;

6.2.8. must not, subject to Section 4.6, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or Equipment or any interest in them (or purport or attempt to purport to do such thing) or permit any lien over the Goods or Equipment; and

6.2.9. by collecting or accepting delivery of the Goods or Equipment, acknowledges that the Contract constitutes a security agreement for the purposes of section 36 of the PPSA and it has received value as at the date of first collection or delivery of the Goods or Equipment (as the case may be) and has not agreed to postpone the time for attachment of the security interest granted to the Company under the Contract.

## 7. WARRANTIES, LIMITATION OF LIABILITY AND INDEMNITY

7.1. **Limitation of Liability.** Subject to Section 7.6, the Company is not liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with the Contract for any indirect, consequential or special loss or damage, even if the Company has been advised of the possibility of such loss or damage, or for any loss of profits, loss of sales, loss of business or agreements, loss of goodwill or loss of wasted staff time.

7.2. **Waiver and Indemnity.** Subject to Section 7.6, the Customer waives, releases and agrees (and will procure that its officers, employees, agents, representatives and contractors waive, release and agree) to defend, indemnify and hold harmless the Company, its affiliates and related companies and each of their respective officers, directors, employees, shareholders, agents, representatives, insurance carriers, successors, licensees, and assigns, and each of them, from any liability, claims, rights of subrogation, demands, actions, causes of action, losses, costs, damages and expenses (collectively, **Claims**) arising out of or based upon:

7.2.1. the Customer's breach of the terms of the Contract;

7.2.2. subrogation claims by the Customer's insurers;

7.2.3. the Customer's use, possession, operation, and transport of the Equipment or the Goods, including the preparation and testing of the Equipment or the Goods (whether or not the preparation and testing takes place on the Company's premises); or

7.2.4. Claims arising as a result of injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the Customer's use,

in each case, other than claims arising out of or based upon the Gross Negligence or wilful misconduct of the Company.

7.3. **Implied Terms.** To the fullest extent permitted by applicable law, the Company excludes all implied representations, warranties, terms and

conditions of any kind whatsoever (whether implied by common law, statute or otherwise) including any implied representations, warranties, terms or conditions that the Equipment or Goods are of satisfactory quality or fit for their purpose.

7.4. Implied Warranties. If the CCA or any other legislation implies a condition or warranty into the Contract in respect of Equipment or Goods supplied, and the Company's liability for breach of that condition or warranty may not be excluded but may be limited, Sections 7.1, 7.2 and 7.3 do not apply to that liability and instead the Company's liability for any breach of that condition or warranty is limited to the Company doing any one or more of the following (at its election):

- 7.4.1. replacing the Equipment or Goods or supplying equivalent Equipment or Goods;
- 7.4.2. repairing the Equipment or Goods;
- 7.4.3. paying the cost of replacing the Equipment or Goods; or
- 7.4.4. paying the cost of having the Equipment or Goods repaired,

in each case, only to the extent that the repairs and replacement result from reasonable wear and tear of the Equipment or defect of the Equipment or Goods. Repairs and replacement costs resulting from any other cause, including without limitation, misuse accident or abuse of the Equipment or Goods shall be charged to the Customer. Unless otherwise required by applicable legislation or in this Conditions of Business, the Company does not accept responsibility for expenses of freight, packing, disassembly, mounting and travelling expenses for a technician and charges of a similar nature.

7.5. If the Customer is a "consumer " under the CGA:

- 7.5.1. the CGA will not apply where the Customer acquires, or holds itself out as acquiring, the Goods or Equipment (as applicable) for the purposes of a business; and
- 7.5.2. neither the Company nor the manufacturer undertakes that facilities for the repair of, and parts for, the Equipment or Goods will be available except as expressly set out in the Contract.

7.6. Nothing in these Conditions of Business is intended to exclude, restrict or modify rights which the Customer may have under the CCA, the CGA, or any other legislation which may not be excluded, restricted or modified by agreement.

## 8. DEFAULT AND REMEDIES

### 8.1. Default.

If either:

8.1.1. the Customer becomes insolvent or ceases to conduct its business as a going concern, or applies for or consents to or otherwise obtains the appointment of a receiver, trustee, administrator, liquidator or similar appointment to the Customer or assets of the Customer, or if proceedings are instituted under any applicable insolvency law; or

8.1.2. the Customer commits any breach of the Contract, including if the Customer refuses to pay the Hiring Fee or periodic invoices or does or permits any act or thing whereby the Company's rights in the Equipment or Goods are prejudiced, and such breach has not been cured within 5 business days from the date of the Company's written notice to the Customer of such breach,

then the Company may:

- (a) demand immediate payment of all accrued and unpaid amounts due, and the Customer must pay such amounts immediately upon such demand; and
- (b) immediately terminate the Customer's right of possession and use of the Equipment, and as applicable, the Goods, and the Customer must immediately return the Equipment or Goods to the Company, or the Company may, at the Customer's expense, enter into any premises where the Equipment or Goods may be located and repossess the Equipment or Goods.

In addition, the Company may pursue any other remedy available to the Company at law or in equity, and each such right and remedy may be enforced concurrently with any other right or remedy.

## 9. GENERAL

9.1. Interpretation. In these Conditions of Business, unless context requires otherwise:

- 9.1.1. any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or

trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;

9.1.2. references to any legislation, statute or statutory provisions includes a reference to those provisions as amended or reenacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;

9.1.3. references to any party include its successors (whether by operation of applicable law or otherwise) and permitted assigns;

9.1.4. any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words; and

9.1.5. references to the singular include the plural and to the masculine include the feminine, and in each case vice versa.

9.2. Relationship of the Parties. Nothing contained in the Contract must be construed to create a partnership between, or joint venture by, the parties, or to constitute either party the agent of the other party. The Contract between the Company and the Customer is not for the benefit of any third party (except indemnitees or insureds) and must not be deemed to give any right or remedy to any such party, whether identified in these Conditions of Business or not.

9.3. Severability. If any provision of the terms of the Contract is deemed illegal, void or unenforceable, such provision is severable, and does not affect any other provision of the Contract, and is deemed to be modified to the minimum extent necessary to avoid the illegality.

9.4. Successors and Assigns. The Contract is binding upon each party and its successors and assigns, however, the Customer must not assign its rights without prior written consent by the Company.

9.5. Attorneys' Fees and Costs. The prevailing party in any suit, legal proceeding, arbitration or other action brought arising in connection with the Contract is entitled to recover its reasonable outside attorneys' fees and other expenses incurred in such proceeding or action, in addition to any other relief to which it may be entitled.

9.6. Governing Law. If the Customer purchases Goods or hires Equipment in New Zealand, the laws of New Zealand apply to the Contract and each party to such Contract submits to the non-exclusive jurisdiction of the courts of New Zealand. Other than in respect of New Zealand customers, the Contract is to be construed according to the laws of the State of New South Wales, Australia and each party to such Contract submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

9.7. Compliance with Laws. The Customer must, at all times, comply with all applicable laws, rules and regulations relating to the use of the Equipment and the Goods and the shipping, handling or transport of the Equipment and Goods, including, all environmental, occupational health and safety or other such laws, rules and regulations and obtain and maintain any required permits or licences with respect to the Equipment or the Goods.

9.8. Set Off All payments made by the Customer are to be made without any abatement, deduction, withholding or set-off.

9.9. Waiver. Any failure by the Company to insist upon strict performance by the Customer of any terms or conditions contained in the Contract must not be taken to be a waiver thereof and no waiver by the Company of one breach of any term or condition in the Contract, whether express or implied, operates as a waiver of another breach of the same or of any other terms or conditions in the Contract whether expressed or implied.

9.10. Notices. All notices under or in connection with these Conditions of Business must be sent to the designated recipient at the respective address indicated:

9.10.1. in the case of the Customer, in its account information, and

9.10.2. in the case of the Company, at the address shown on the Contract or invoice, to the attention of the Managing Director.

All notices must be in writing and must be sent by prepaid mail, by reputable overnight courier service, or by facsimile with a hard copy via prepaid mail.