

# 1<sup>ST</sup> CHOICE RENTALS

TERMS & CONDITIONS  
OF RENTAL V4.0  
AND INFORMATION STATEMENT (FORM 17)

## CONSUMER LEASE



**PH: 1300 552 558**

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A.B.N 23 082 914 725  
Australian Credit Licence No.: 393676



# Terms and Conditions of Rental

## 1<sup>st</sup> Choice Rentals

Effective from October 2017

### 1. General

This Rental Agreement commences operation on the date set in the Schedule.

The parties to this Rental Agreement are 1<sup>st</sup> Choice Enterprises Pty Ltd ABN 23 082 914 725 of 1/1 Reaghs Farm Road Minto, NSW 2566 referred to in this Agreement as **(Owner or we)** and the party named in the Schedule as the lessee referred to in this Agreement as **(Lessee or you)**

This document, together with the Schedule which may be a separate document and any direct debit agreement form the entire agreement between us in relation to the Goods.

### 2. Definitions

In the Rental Agreement the following words have the following defined meanings:

- a) Bond means the amount, if any, specified in the Schedule which must be lodged by the Lessee with the Owner prior to delivery of the Goods as security bond for the return of the Goods in reasonable working order.
- b) Consumable Item means perishable items that are used in conjunction with the Goods such as but not limited to batteries, ink cartridges, light bulbs and detergent powder and which are the sole responsibility and liability of the Lessee. Additional list of Consumables can be viewed on the Owner's website at <http://www.1stchoicerentals.com.au>.
- c) Date of Installation means the date upon which the Owner through its employees or agents delivers the Goods to the address specified in the Schedule as the Delivery Address.
- d) Delivery Address means the address listed in the Schedule as such and to which the Goods are delivered by the Owner.
- e) Enabling Technology means a technology that is built into Goods that are capable of connecting to the Internet which enables the Owner to disable the

Goods and or communicate with the user of the Goods as set out and subject to the provisions in clause 4.

- f) Fair Wear and Tear means deterioration caused by the reasonable and ordinary use and operation of the Goods in accordance with the manufacturer's instructions.
- g) Field Call Fee means the fee described in the Schedule which is a fee the Owner charges the Lessee.

Fees mean the fees and charges that apply to this Rental Agreement as set out in the Schedule.

- i) in the event a service call is made and the cause for the service call turned out to be not a warranty issue to which the Owner is liable;
  - ii) in the event the Owner is required to collect the Goods in the event of a default under this Agreement;
  - iii) in the event the Owner is forced to attend the Delivery Address in order to communication with the Lessee following the failure of the Lessee to communicate with the Owner or to collect a Rental Instalment.
- h) Force Majeure means an event outside the reasonable control of the relevant party and including but not limited to fire, flood, storm, cyclone, tornado, earthquake, tidal wave, traffic congestion/accident, mechanical failure of a delivery vehicle, staff sickness or injury, and man-made disasters including but not limited to a terrorist act, war, rebellion, insurrection, sabotage, epidemic, explosion, collapse or damage to a building as result of the negligence of any party.
- i) Goods means the leased goods that are described in the Schedule and include any manuals, remote controls, peripherals and software included or delivered to the Lessee.
- j) LLC means Limited Liability Cover which is a scheme run by the Owner which the Lessee may participate in if the Lessee does not have content insurance that covers the Goods. The scheme reduces the liability of the Lessee in the event of a Prescribed Event with respect to the Goods.
- k) LLC Instalment means the amount set out in the Schedule which the Lessee must pay the Owner in order to limit the liability of the Lessee for any loss or damage as specified in Clause 17
- l) **Prescribed Event** means in the context of LLC an event which result in the Goods being either partially or totally damaged as a consequence of
  - a. theft of the Goods;

- b. fire to the Delivery Address;
  - c. Floods at the Delivery Address;
  - d. Storm damage at the Delivery Address.
- m) Privacy Policy means the Owner's privacy policy issued or updated during the term of this Rental Agreement and available via the Owner's website at <http://www.1stchoicerentals.com.au>.
  - n) Rental Agreement means this document of terms and conditions, the Schedule and any direct debit agreement the Lessee executes in favour of the Owner.
  - o) Rental Instalment means the amount payable by the Lessee as specified in the Schedule and at the frequency specified in the Schedule.
  - p) Term means the term of this Rental Agreement as set out in the Schedule and marked as number of instalments.
  - q) Schedule means the document marked as a schedule forming part of this Agreement

### **3. Interpretation**

- a) In this Agreement singular words include plural words, words importing persons apply to corporations, the masculine gender includes the feminine and neuter genders.
- b) If there are more than one Lessee as set out in the Schedule, each of the Lessees is responsible and liable under this Rental Agreement jointly and severally.

### **4. The Rental Agreement**

#### **Delivery of the Goods**

- a) At the request of the Lessee, the Owner agrees to lease the Goods as specified in the Schedule to the Lessee subject to the terms and conditions set out in this Agreement.
- b) The Owner will deliver the Goods to the Delivery Address. The Lessee must receive the Goods at the Delivery Address or ensure that an authorised person is at the Delivery Address to receive the Goods.
- c) By accepting delivery of the Goods or by allowing an authorised person of the Lessee to accept the Goods, the Lessee confirms that the Goods are the goods the Lessee ordered.
- d) The Lessee agrees that the signature of the Owner's agent who delivered the Goods to the Delivery Address is sufficient proof of delivery.

- e) The Lessee must inspect the Goods and ascertain that the Goods are in working order when received. If the Lessee does not inspect the Goods or fails to advise the Owner of any defects in the Goods, the Goods are deemed to have been delivered in good working order.
- f) Non-delivery

In the event that the Owner and the Lessee have made an arrangement for the delivery of the Goods to the Delivery Address and the Lessee is not present at the Delivery Address to take possession of the Goods, the Owner may charge the Lessee a non delivery fee, being a genuine pre-estimate of the damage suffered by the Owner for such inability to deliver the Goods. The fee is set out in the Schedule.

### **Additional Goods**

- a) The Lessee may request, from time to time, to rent from the Owner additional Goods or to add on to the existing lease items which may be considered add-ons to the Goods (e.g. PlayStation add on product to a Television set).
- b) If the Lessee wishes to have additional products, the Lessee must submit a fresh application form to the Owner and supply the Owner with such information as is necessary to support the suitability of the added product to the Lessee's needs and the Lessee's income and expenses.
- c) The Owner may approve or decline a request for additional products at its discretion.
- d) The Owner may agree to vary this Rental Agreement by adding the additional product or by issuing a fresh rental agreement to cover the additional products. If this Rental Agreement is varied, the Owner will issue a variation notice to the Lessee providing details of the changes to the agreement and the Schedule.

### **Goods whereabouts**

The Owner may, from time to time and at any time, in writing request from the Lessee information as to the whereabouts of the Goods. The Lessee must provide the Owner with information as to the whereabouts of the Goods within 7 days of the date of the request. If the Lessee does not provide the Owner with the requested information as to the whereabouts of the Goods, the Owner may use the Enabling Technology to locate the Goods.

- a) If it becomes necessary for the Lessee to relocate from the Delivery Address or move the Goods to an address other than the Delivery Address, the Lessee must inform the Owner of the new address of the Lessee. Failure to inform the Owner is a fundamental breach of this Rental Agreement.

### **Consumable Items**

- b) The Lessee agrees that the Lessee is solely responsible and liable for the procurement of and payment of all Consumable Items to be used in relation to

the Goods. The Lessee must follow the manufacturer's warranty and manual when acquiring Consumable Items for the Goods. The Owner is not responsible for providing Consumable Items to the Lessee and may refuse to provide support in relation to Consumable Items.

- c) The Lessee acknowledges and agrees that, generally speaking, Consumable Items do not fall under the responsibility of the manufacturer as a manufacturer's warranty.

### **Enabling Technology**

- d) The Lessee acknowledges that Goods that are capable of connecting to the Internet may have installed on them Enabling Technology.
- e) The Enabling Technology is built into the hardware of the device and cannot be disabled and its function cannot be distinguished or isolated from the operation of the Goods.
- f) The Lessee acknowledges and agrees that the Owner may use the Enabling Technology in the following circumstances;
  - (i) in the event of default by the Lessee, the Owner may use the Enabling Technology to disable the device and render it inoperative;
  - (ii) in the event of default by the Lessee, the Owner may use the Enabling Technology to send a message to the Lessee;
  - (ii) in the event of default by the Lessee, the Owner may use the Enabling Technology to locate the Goods.
- g) The Owner warrant and represent and the Lessee acknowledges that the Enabling Technology cannot be used by the Owner;
  - (i) to view any information of the Lessee on the device;
  - (ii) to use any information of the Lessee on the device;
  - (iii) to transmit or install any information or data on the device; or
  - (iv) to gain access to any photos stored on the device or to any camera installed onto the device.

## **5. Term and Termination**

- a) This Rental Agreement commences operation on the date set out in the Schedule marked as First Instalment Date and will expire at the conclusion of the term.
- b) The Rental Agreement is a fixed term consumer leasing agreement.

- c) Before the Goods are delivered to the Lessee, the Lessee may terminate this Rental Agreement by notice to the Owner. The Owner may charge the Lessee administration cost for the cancellation of the agreement.
- d) After the Goods have been delivered to the Lessee, this Agreement cannot be terminated by either party unless permitted under this agreement.
- e) If the Lessee wishes to terminate this Rental Agreement before the expiry of the Term, the Lessee will be in breach of the agreement unless the Owner agrees to the termination.
- f) If the Lessee is in breach of this Agreement, the Owner may terminate the agreement after following the default process as set by law and may commence enforcement process against the Lessee and repossess the Goods. The Owner may also use the Enabling Technology to disable the Goods and or transmit any default message to the Lessee.
- g) The Lessee may terminate this Agreement at any time during the Term by returning the Goods to the Owner and paying the Owner any monies (unpaid Rental Instalments for the Term) owed under this Agreement. If requested by the Lessee, the Owner must provide the Lessee an end of lease statement with details of the Lessee's liability for payment on termination of the Agreement.
- h) On termination of the Rental Agreement by the Lessee in breach of the Rental Agreement Term, the Owner has the right to recover from the Lessee any outstanding Rental Instalments until the expiry of the Term plus any enforcement expenses.
- i) Continuation of the Rental Agreement

Upon the expiration of the Term if the Lessee does not make an election in accordance with the end of lease statement, this Rental Agreement may continue on a month-by-month basis until such time as the Rental Agreement is terminated by either party by one month notice.

## **6. Payment and Default**

- a) The Lessee must pay the Rental Instalments and any Fees as set out in the Schedule at the amount and in the frequency as set out in the Schedule. Rental Instalments are paid in advance. The date of the first Rental Instalment is set out in the Schedule.
- b) The Rental Instalments are fixed for the Term of the Rental Agreement.
- c) The Lessee may pay the Rental Instalments by:
  - i. setting up a direct debit from the Lessee's nominated account and executed the direct debit service agreement with the Owner; or
  - ii. setting up a direct deduction from the Lessee's Centrelink/Centrepay account; or

- iii. any other means as agreed with the Owner from time to time.
- d) The Lessee may change the method of payment under this Rental Agreement but must advise the Owner of the change. Failure to advise the Owner of the change of payment mechanism is a breach of this Agreement.
- e) Each of the following constitutes an event of default under this Agreement entitling the Owner to terminate this Agreement following a notice of default and failure of the Lessee to remedy the default;
  - i. If the Lessee fails to make the Rental Instalment as set out in the Schedule;
  - ii. If the Lessee is in breach of any obligation under this Agreement other than payment obligation and such a breach continues for 7 days after the Lessee was advised to remedy the breach;
  - iii. If the Lessee advises the Owner that he has an insurance policy that covers the Goods and the Lessee cancels the policy or does not renew the policy when it falls due;
  - iv. If the Lessee enters into any arrangement with the Lessee's creditors or is bankrupt, unless the owner agrees otherwise, the Lessee must return all goods to the owner prior to entering into any form of bankruptcy; or
  - v. If the Lessee tempers with or attempt to temper with the Enabling Technology.

### **Bond**

- f) The Owner may, at its absolute discretion, require the Lessee to pay the Bond. The Bond is a security deposit with the purpose of ensuring the return of the Goods at the end of the Rental Agreement in a reasonably working order Fair Wear and Tear excluded.
- g) The Owner reserves the right to use the Bond if the Goods are returned not in a reasonable working order or the Goods are dirty.

### **Fees and Charges**

- h) The Lessee must pay to the Owner the Fees and Charges as set out in the Schedule including any dishonour or late fees. The Fees and Charges are fixed for the Term of the Rental Agreement except for any government duties and levies. If a government duty or levy (such as stamp duty or Goods and Services Tax) are imposed under the Rental Agreement and it's varied during the Term, the Owner may vary this Agreement accordingly.

## What happens on Default?

- i) If the Lessee is in default under this Agreement, the Owner will issue a default notice to the Lessee demanding that the Lessee remedy the default within 30 days. If the Lessee remedies the default before the expiry of the default notice then the issue is remedied.
- j) If the Lessee does not remedy the default, this Agreement may be terminated by the Owner and enforcement action commencing against the Lessee and repossession action of the Goods.
- k) Termination of this Rental Agreement due to a default does not change, amends or vary the Lessee's financial obligations and liability for the Rental Instalments for the duration of the Rental Agreement.
- l) The Lessee may ask the Owner to postpone any enforcement action. The notice may be in writing or verbal. The Owner must consider the request and advise the Lessee within 21 days of the request whether the Owner is agreeable to postpone the enforcement proceeding against the Lessee and if the Owner does not agree to postpone then provide the Lessee with reasons for the refusal and details of the Owner's external dispute resolution scheme and the Lessee's right under that scheme. The Owner does not have to agree to postpone enforcement proceedings.
- m) If this Agreement is terminated due to a default of the Lessee;
  - i) the Lessee must deliver to the Owner the Goods in a good working order Fair Wear and Tear excluded;
  - ii) the Owner may collect the Goods from the Lessee;
  - iii) the Owner will provide the Lessee with an access to premises form and the Lessee must sign that form and grant the Owner access to the Lessee's premises for the purpose of recovering the Goods;
  - iv) If the Lessee refuses to grant access to the Lessee's premises, the Owner may apply to the court seeking an order to gain access to the premises to recover the Goods. If this occurs, enforcement expenses will be added to the costs of the lease;
  - v) the Lessee irrevocably appoints the Owner as his attorney for the purpose of executing such documents and forms as are necessary in any enforcement or repossession proceedings;
  - vi) the Lessee will remain liable to the Owner for monies still owing under the Agreement at termination including reasonable enforcement expenses and If the Owner recovers the Goods from the Lessee, the Owner may deal with the Goods as it deems fit;
  - vii) all monies owing under this Agreement become due and payable immediately.

- n) The Lessee agrees to indemnify and to continue to indemnify the Owner against all losses, costs and expenses the Owner incurs or suffers as a consequence of the Lessee's use of the Goods or a breach of this Agreement including, without limitation, to any loss of rent for the Goods and enforcement expenses and against any claim arising out of the Lessee's use of the Goods.

### **Peaceful Possession and Quiet Enjoyment**

- o) Provided that the Lessee complies with the terms of this Agreement, the Lessee shall have peaceful possessions and quiet enjoyment of the Goods.

### **Allocation of Payments**

- p) The Lessee agrees that any payments received by the Owner under the Rental Agreement may be applied by the Owner to any amount the Lessee owes under the Rental Agreement in any order the Owner determines.
- q) If the Lessee has a number of Rental Agreements with the Owner and the Lessee makes a payment towards one of these agreements without specific instructions as to where this payment should be allocated then the Owner may apply the payment to any one or more of the Rental Agreements in any way the Owner thinks fit.
- r) If the Lessee has a number of Rental Agreements with the Owner and the Lessee makes a payment towards one of these agreements which exceeds the required rental instalment and without specific instructions as to where the excess is to be paid then the Owner may apply the overpayment towards money owed to the Owner in any way the Owner thinks fit.

## **7. Maintenance and Servicing of the Goods**

- a) The Lessee is responsible for the day to day care of the Goods and must maintain the Goods in good working order Fair Wear and Tear excepted.
- b) The Lessee will receive from the Owner any manufacturer warranties and operational manuals. The Lessee must operate the Goods in accordance with the manufacturer's manual and must not take any step or action that are disallowed by the manufacturer and that may void the manufacturer's warranty.
- c) The Lessee must not install any add on items onto the Goods or make any alterations to the Goods unless it is authorised in writing by the Owner.
- d) If the Goods require servicing because the Goods stopped working, the Lessee must log in a service call with the Owner. The Owner will arrange for the warranty service call to be executed and depending on the location of the Goods either;
  - i. a technician to visit the Delivery Address to repair the Goods; or

- ii. for the Goods to be delivered by the Lessee to a repair centre nominated by the Owner for the Goods to be repaired.
- e) If a service call has been made and after the technician examines the Goods it is determined that the service call is not a warranty call then the Owner reserves the right to charge the Lessee a Field Call Fee. Examples where a Field Call Fee will be charged are (but not limited), if a battery operated Good malfunctions and it turns out that it is a battery replacement issue and not a warranty issue or if a fridge stopped working and it turned out to be a cleaning issue and not a warranty repair.
- f) If it is necessary to retain the Goods for the purpose of warranty repairs, the Owner may, at its absolute discretion, allow the Lessee to borrow an item with similar description and functionality as the leased Goods (**borrowed Goods**).
- g) The Lessee must return the borrowed Goods to the Owner;
  - i. on the day that the Lessee received the leased Goods from the repairer; or
  - ii. on the earlier of the date that is seven (7) days after the date that the Owner demands the borrowed Goods be returned; or
  - iii. one (1) month after the date that the Lessee takes possession of the borrowed Goods
- h) If it is determined that the Goods cannot be repaired under warranty, the Owner will use its best endeavours to supply to the Lessee the same leased Goods, however, the Lessee acknowledges and agrees that if the Owner is unable for whatever reason to acquire the same leased Goods and supply to the Lessee, the Owner is entitled to supply to the Lessee a substituted product which is compatible in price, looks and functionality as the leased Goods and the substituted item will become the leased Goods under this Rental Agreement.
- i) The Owner will have the right to refuse to service, repair or replace the Goods if in the Owner's opinion the Goods have been misused, the Enabling Technology has been tampered with or if any Rental Instalment is overdue and such refusal will be without prejudice to the provisions of this Rental Agreement and will not be deemed to be a waiver of any of the Owner's rights under this Rental Agreement and will not discharge the Lessee from the liability to continue to pay the Rental Instalments.
- j) The Owner may refuse to service the Goods and may charge the Lessee for the service of the Goods if any of the following circumstances occur:
  - i. there is any evidence that warranty or identification markings or security labels on the Goods have been broken or tampered with;
  - ii. there is evidence of Infestation by insects or rodents that affects the Goods;

- iii. the damage to the Goods is as a result of an electrical surges or lightning strike;
  - iv. the Damage to the Goods was maliciously or accidentally caused;
  - v. the Damage was as a result of water or fluid penetrating the electrical or working components of the Goods;
  - vi. the damage was caused by the Lessee's use of the Goods contrary to the manufacturer's instructions and/or directions;
  - vii. if the damage isn't covered by under LLC;
  - viii. Damage as a result of Force Majeure;
  - ix. Damage as a result of Computer Viruses, Adware and Spyware that have infected the Goods.
- k) The Lessee acknowledges that in some circumstances and depending on the remoteness of the Lessee's new address, the warranty services under this Rental Agreement may be affected because neither the Owner nor the manufacturer can service the area where the Lessee relocated. In this event, the Owner will cooperate with the Lessee in an endeavour to find a service centre that will service the Lessee's new address and the Lessee agrees that it is his or her sole responsibility and liability to deliver the Goods to the nominated service centre for warranty related service.

## **8. Ownership and Passing of Title**

- a) The Lessee acknowledges and agrees that the Lessee is a bailee of the leased Goods. Ownership to the leased Goods shall remain, at all times during the Term, with the Owner and the Lessee have no proprietary right to the Goods. The Lessee must not mortgage or raise any charge against the Goods or deal with the Goods in a manner that is inconsistent with the Owner's interest unless expressly agreed in writing by the Owner.
- b) At the expiry of the Rental Agreement, unless agreed otherwise with the Owner, the Lessee must return the Goods to the Owner in proper working order and condition except Fair Wear and Tear within 2 days of the end date. The Goods must be returned to the Owner's address or to as location as directed by the Owner.
- c) This Agreement is not an offer by the Owner to pass the Goods to the Lessee at the expiry of the Term nor is it an agreement for the purchase of the Goods by instalments. The Lessee does not have a right or the obligation to purchase the Goods at the expiry of the term.
- d) The Lessee may make an offer to the Owner, at any time, to purchase the leased Goods. The Owner must provide the Lessee with a statement setting out the outstanding liabilities under the Rental Agreement and if the Owner agrees to sell the Goods to the Lessee then the sale price. The Owner is not obligated to sell

the Goods to the Lessee and unless the Owner agrees to sell the Good, the Rental Agreement shall remain in place.

- e) At the End Date and subject to you not being in breach of this Agreement in relation to payments, you may make an offer to the Owner to buy the Goods from the Owner.
- f) Towards the end of the Term, the Owner will provide the Lessee with an end of Rental Agreement statement. See clause 9.

## **9. Statement of Account**

- a) On regular intervals as required by law, the Owner shall issue to the Lessee a periodic statement of account. The statement will be issued prior to the expiry of the Term if the Term is 12 months and if the Term is longer, then every 12 months.
- b) The Owner will not give the Lessee a statement of account if the Lessee is in default under this Agreement and the Owner commenced enforcement proceeding or if the Lessee is a natural person, the Lessee dies or is insolvent unless the trustee in bankruptcy or the personal representative of the Lessee asks for a statement of account.
- c) The Lessee may, at any time, request the Owner to issue the Lessee with a statement of account. The request can be verbal or in writing. The Owner must issue such statement within 14 days of the request being made. If the request was oral the statement can be given orally and if the request was in writing the statement must be given in writing.
- d) The statement of account will contain such information as required by law including any credits and debits to the account and the amount outstanding under the Rental Agreement.
- e) The Owner must issue to the Lessee an end of Rental Agreement statement. The end of Rental Agreement statement must be issued no less than 90 days before the expiry of the Term.
- f) The end of Rental Agreement statement will describe to the Lessee the obligations of the Lessee on expiry of the Term. The statement will describe to the Lessee whether the Owner is willing to negotiate the sale of the Goods to the Lessee and under what conditions. The statement will further describe to the Lessee what liabilities the Lessee will have if the Goods are not returned to the Owner.
- g) An end of Rental Agreement statement does not have to be issued if the Lessee is in default of this Agreement and the Owner commenced enforcement proceedings, the Lessee dies or is insolvent and the trustee in bankruptcy or the personal representative of the Lessee did not ask for a statement or the Owner had written of the debt.
- h) The Lessee may request a statement of amounts payable on termination to be issued. The Owner will provide such a statement within 7 days of the request. The statement will contain information regarding the liability of the Lessee on

termination of the Rental Agreement and whether the Owner is willing to negotiate the sale of the Goods to the Lessee.

## 10. Privacy

- a) This collection, storage and disclosure of personal information by the Owner is governed by this provisions and the Owner's privacy policy which can be found on the Owner's website. The Owner may amend the privacy policy from time to time and will display the amended policy on its website.
- b) Personal information is defined in the Privacy Act as information (or opinion), in any form, about an individual (not a business, company or trust) whose identity is apparent or can be ascertained from the information held.
- c) By signing this Agreement, the Lessee agrees to the collection, use and disclosure of personal information as set out in this privacy provision and to the collection of credit information from the Lessee's credit file.
- d) The Owner undertakes to comply with the Privacy Act 1988 (Cth) as amended from time to time.
- e) The Owner will collect personal information from the Lessee during the application process and throughout the operation of this Rental Agreement. The Owner will guard the personal information from misuse. The Lessee does not have to disclose personal information but failure to disclose personal information may result in the Owner declining to offer the Goods for rental under a Rental Agreement.
- f) The Owner must assess the Lessee's application under the responsible lending regime in the credit law. To do that, the Owner may seek access to the Lessee's credit file. The Lessee expressly authorises the Owner to liaise with any credit reporting agencies or credit providers and receive from these bodies information about your credit file, credit history and credit worthiness.
- g) The Owner may collect and disclose personal information as is necessary to manage the Rental Agreement and follow the Lessee's requests and instructions.
- h) The Owner may use personal information to market additional products to the Lessee and provide offers from time to time. The Lessee may ask the Owner to stop by calling the Owner.
- i) If there is a default under the Rental Agreement and the default is not remedied in accordance with the time line as provided in the default notice, the Owner may report the default to the credit reporting agencies in compliance with the Privacy Act 1988. The reporting agency the Owner uses as at the date of this Agreement is Equifax (formally Veda Advantage Limited) and Compuscan. Details of these credit bureau can be found in our Privacy Policy. The Owner may change the reporting agency at any time and from time to time without advising the Lessee.

- j) The Lessee has the right to seek access to any information held by the Owner. If the Lessee believes their personal information is not accurate, complete and up to date, it should inform The Owner by contacting The Owner on [privacy@1stchoicerentals.com.au](mailto:privacy@1stchoicerentals.com.au). A fee may be payable to access and or correct the Lessee's personal information.
- k) If the Lessee is of the view that there has been a breach of privacy, the Lessee may file a complaint with the privacy officer of the Owner. The Owner will investigate the complaint and respond back to the Lessee. If the Lessee is not satisfied with the response from the Owner, the Lessee may file a complaint with the Office of the Australian Information Commissioner on 1300 363 992.

## **11. Use of the Goods**

- a) The Lessee is solely responsible and liable for the day to day operation of the Goods and for any costs associated with the replacement of any Consumables.
- b) The Lessee is solely responsible and liable to the Owner if the Lessee uses the Goods in a manner which is inconsistent with the manufacturer's manuals or specifications.
- c) The Goods come with manufacturer's warranty which the Lessee has access to. See the Service section of these terms and conditions.
- d) The Lessee must return the Goods in good working order Fair Wear and Tear excepted.

## **12. Computer Equipment**

- a) This clause applies if the Goods comprise or include computer equipment.
- b) The Lessee agrees that:
  - i. Any software preloaded onto the Goods is subject to copyright and the Owner does not own the copyright in that software. The Owner is permitted to allow the Lessee to use the software as pre-loaded on the Computer.
  - ii. Any right to use the software expires at the end of the rental period.
  - iii. Copying, modifying or transferring any of the software is prohibited.
  - iv. The Owner is not obliged to maintain or upgrade any software or hardware.
- c) At the end of the Rental Agreement, the Lessee must return the software and computer disks containing software to the Company and the Lessee must remove all software and personal information not supplied by the Company from the relevant computer equipment.

- d) Where the Lessee has failed to remove any software and/or personal information from the Goods, the Owner will not be liable for any direct, indirect, consequential or incidental damage to the Lessee's business or property or for any loss or injury to any person, howsoever caused that may arise through the failure of the Lessee to remove the relevant software and/or personal information.
- e) The Lessee releases the Owner from and indemnifies the Owner against any and all claims arising directly or indirectly out of any loss, damage, injury, accident or death suffered by the Lessee or any third party as a result of the failure of the Lessee to remove the relevant software and/or personal information.
- f) The Owner will only repair or replace faulty batteries and power charges/adaptors in laptops during the first 12 months of the Rental Agreement
- g) The Owner accepts no liability for any data, programs, viruses on the computer equipment.

### **13. Fitness and Outdoor Play Equipment**

This clause applies if the Goods comprise Exercise Equipment.

- a) The Owner will supply the Lessee with a user manual upon delivery of the fitness and outdoor play equipment to the Lessee.
- b) The Lessee must only assemble and operate the exercise and outdoor play equipment in accordance with the user manual.
- c) Children should be supervised by a responsible adult at all times and/or be wearing suitable protective clothing whilst using the goods,
- d) The Owner shall not be liable or responsible for any injury or loss arising out of the Lessee's use of the fitness and outdoor play equipment.

### **14. Air-Conditioning Units**

This clause applies if the Goods comprise Air-Conditioning Units known as "Split or Window Systems" but excludes "portable units".

- a) Where the Owner has quoted a rental installment for the supply and installation, the Owner will install at the Delivery Address the Air-Conditioning Unit, at no extra cost to the Lessee except
  - i. If the Lessee main electrical board requires an upgrade to install the Air-Conditioning Unit
  - ii. the Air-Conditioning Unit requires more than back to back installation requiring more than 10 metres cabling to the meter box and/or more than 5 metres of the gas/refrigerant tubing connecting the outdoor unit to the indoor unit.

For the avoidance of doubt, back to back installation means for the split air condition system where the compressor external unit and the room internal unit are located on the same wall near or back to back to each other

- b) If the Lessee is required to move the Air-Conditioning Unit from the address the unit was installed then the Lessee must engage, at its costs, a technician to relocate the unit.
- c) At the expiry of the Rental Agreement, unless it is agreed otherwise, the Owner will remove the air conditioning unit at the cost of Lessee.
- d) If this Rental Agreement is terminated due to a default, the Owner will remove the air condition unit at the costs of the Lessee.
- e) The Owner is not responsible or liable for any damage caused by the Lessee's use of an air condition unit.

Any damage to the Air-Conditioning Unit caused by the disconnection and installation other than by The Owners authorised licensed installer will be a breach of the Rental agreement and all loss arising from this breach is at the Lessees risk and cost.

The Owner is not responsible for any restoration to the Lessee premises due to the disconnection and/or removal of the Air-Conditioning Unit.

## **15. Mobility Scooter**

This clause applies if the Goods comprise a Mobility Scooter.

- a) The Lessee acknowledges and agrees that the Lessee will comply with the respective local road and traffic authority with respect to vehicle registration and/or other road rules.
- b) The Lessee agrees that mobility scooters are provided and will be used solely for the conveyance on paved surfaces of a person with a disability that substantially impairs that person's mobility. Mobility Scooters are not intended or designed to be used as a motor vehicle replacement.
- c) The Lessee acknowledges and understands that the Scooters are not capable of travelling safely at more than 10km/h and are not to be used on uneven ground, steep angles, kerbs and gutters or any other surface that could not be reasonably considered to be safe for the Scooters to travel upon.
- d) Should the Scooter develop a mechanical fault, the Lessee should discontinue using the Scooter until the fault has been rectified by an authorised service agent.
- e) The Lessee acknowledges and agrees that the Lessee holds the Owner harmless and releases the Owner from any liability with respect to a loss or injury sustained by the Lessee or a third party because of the use of the Scooter. The Lessee indemnifies the Owner against any and all claims arising

directly or indirectly out of any loss, damage, injury, accident or death suffered by the Lessee or any user of the Mobility Scooter howsoever the loss, damage, injury, accident or death is occasioned.

## **16. Loss or Damage**

- a) The Lessee will be responsible and liable for any loss or damage whatsoever and howsoever caused to the Goods unless the damage is covered by the LLC provision.
- b) If the Goods are damaged and cannot be used, this does not affect the Term of the Rental Agreement or the liability of the Lessee to the Rental Instalments for the Term of the Rental Agreement.
- c) On demand the Lessee must pay to the Owner the amount the Owner is claiming as losses as a result of the damage to the Goods.

## **17. Limited Liability Cover (LLC)**

- a) Where the Lessee does not have a current household contents insurance policy that extends to cover the Goods that are the subject of the Rental Agreement, the Lessee may pay the LLC Instalment to the Owner.
- b) LLC is not an insurance policy and the LLC Instalment is not an insurance premium. In consideration of the payment of the LLC Instalment, the Owner limits the liability of the Lessee to the Owner for the cost of replacing the Goods that are the subject of the Rental Agreement in the instance of the total or partial loss of the Goods due to a prescribed event.
- c) If the Lessee has a current household contents insurance policy for the Delivery Address and the policy extends to cover the Goods that are the subject of the Rental Agreement, the Lessee is not required to purchase LLC. The Lessee must produce a copy of the policy to the Owner on delivery of the Goods. The Lessee must not allow the policy to lapse or cancel the policy during the Term without the Owner's consent. This is a fundamental term of this Rental Agreement.
- d) If the Owner becomes aware that the Lessee's insurance policy is no longer valid, the Owner reserves the right, as a condition of continuing the Rental Agreement, that the Lessee commence paying LLC Instalments under this clause. If requested, the Lessee must commence paying LLC Instalments.

### **LLC Instalments**

- e) The amount of any applicable LLC Instalment is specified in the Schedule and forms part of the Rental Instalment. The first LLC Instalment is payable at the time of the signing of the Rental Agreement. The second and subsequent LLC Instalments are payable from the Lessee's account at the same time as the Rental Instalment becomes due and payable and in accordance with the following provisions;

- i) If the Lessee is paying by direct debit, the Lessee hereby authorises the Owner to deduct the LLC Instalment as well as the Rental Instalment from their account.
- ii) Where the Lessee is paying via Centrepay, the Lessee must include the LLC Instalment as part of the Rental Instalment as set out in the Schedule.
- iii) LLC will be deemed to continue for the term of the Rental Agreement unless the Lessee informs the Owner that they have acquired a current household contents insurance policy and the policy extends to cover the Goods that are the subject of the Rental Agreement and the Lessee supplies the Owner with a copy of the current household contents insurance policy or a certificate of currency as provided by the insurer at which time the Owner will cease to deduct LLC Instalments from the Lessee account.
- iv) The deduction of both LLC and Rental Instalments will cease at the time that the Rental Agreement is terminated.
- v) LLC will not operate and shall be unenforceable if the Lessee is in default under this Agreement.

### **Scope of LLC**

- f) The application of the LLC is subject to the following conditions;
  - i. the Lessee must demonstrate to the Owner that the Lessee took reasonable care of the Goods and took such steps as are reasonable in the circumstances to mitigate any damage to the Goods;
  - ii. in the event of a theft as a Prescribed Event, the Lessee;
    - 1. must demonstrate that the Prescribed Event took place as a result of a forced entry to the Delivery Address;
    - 2. must be able to provide to the Owner a copy of the Police report for the incident;
    - 3. must contact the Owner as soon as the Prescribed event occurred and obtain a claim number; and
    - 4. must submit a claim with the Owner within 48 hours of the Police report being prepared.
  - iii. In the event of storm damage or flood as a Prescribed Event, the Lessee;

- a) must provide evidence of the incident which can be photographic evidence or a report by an official body;
  - b) must report the Prescribed Event to the Owner within 48 hours of the Prescribed Event occurring; and
  - c) must file a claim with the Owner within 5 business days of the Prescribed Event occurring.
- iv. If a Prescribed Event occurs, the Lessee must fully and accurately complete a Damage Report and return the report to the Owner within seven (7) days after the damage;
  - v. In the case of storm damage to Goods, the Lessee must use an electrical surge protector with the Goods. Failure to use an electrical surge protector will be evidenced by the condition of the Goods. Failure to use a surge protector will result in the LLC claim being denied.
  - vi. Failure by the Lessee to comply with the conditions in this clause entitles the Owner to deny a claim under LLC and the Owner is released from any obligations under the LLC.

### **Claim Processing Fee**

- g) A non-refundable Claim Processing Fee is payable by the Lessee to the Owner for any claim under this LLC clause before the Owner will be obligated to process the Claim. The Claim Processing Fee is as set out in the Schedule.

### **No Obligation on the Owner to Replace the Goods**

- h) Where a claim is made against the LLC and provided the Lessee is not in default under this Rental Agreement, the liability of the Lessee shall be limited in accordance with the provisions of this clause but for the avoidance of doubt, the Owner shall not be liable or required to replace the Goods where the Goods are totally destroyed.
- i) If the Goods are totally destroyed and the Lessee wishes to obtain new goods for lease, the Lessee must first deal with the liability issue under this Rental Agreement and then attend to securing new goods from the Owner under a separate rental agreement.
- j) The Owner, in its discretion, may repair partially damaged Goods as a result of a Prescribed Event but there is no compulsion on the Owner to repair damaged Goods.

### **Extent of the Lessee Liability for Loss or Damage to the Goods**

- k) If the Goods are damaged or stolen as a result of a Prescribed Event and the Lessee is not in default under this Rental Agreement then under LLC the Lessee's liability shall be as follows:

- 1) where the Prescribed Event occurs within 12 months of commencement of this Rental Agreement, the Lessee's liability , will be limited to 50% of the cost of the replacement of the Goods at market price in the event of a theft and 50% of the repairs of the Goods in the event of partial damage relevant as at the time of the loss or damage to the Goods; or
  - 2) where the Prescribed Event occurs after 12 months of commencement of this Rental Agreement, the Lessee's liability to the Owner for the damage or theft of the Goods, will be nil.
- l) If the Owner agrees that a Prescribed Event is governed by the LLC conditions and therefore a claim under LLC is accepted, this Rental Agreement terminates on the payment by the Lessee of the relevant liability, if any.
  - m) The Rental Agreement continues if the Owner elects to replace or repair the Goods which were the subject matter of a Prescribed Event. If the Goods are lost or stolen, the Owner may use the Enabling Technology to disable the Goods and transmit a message to the person in possession of the Goods.

## **18. Hardship**

- a) If the Lessee is experiencing hardship or difficulties in meeting the financial obligations under this Rental Agreement, the Lessee is encouraged to contact the Owner without delay and advise the Owner of that issue.
- b) The Owner may give the Lessee notice within 21 days of receiving the Hardship Notice requiring the Lessee to provide further and better particulars in relation to the hardship. The request for information can require information to be provided within 21 days of the date of the Owner's request.
- c) The Lessee must comply with the Owner's notice for further and better particulars in relation to the hardship.
- d) The Owner must consider the request for hardship relief from the Lessee and any additional information provided and must respond to the Lessee within the prescribed period as set out by law. Generally speaking within 21 days of receiving the notice of hardship or 21 days after receiving additional information or 28 days from the notice by the Lessee.
- e) The Owner does not have to vary this Rental Agreement due to hardship. If a variation is agreed upon, the Owner will issue to the Lessee, no later than 30 days after the agreement to vary is made, a notice settling out the particulars of the change. Variation may entail a reduction of Rental Instalments, temporary full or partial suspension of payment requirement or extension of the Term of the Rental Agreement.
- f) If the Owner does not agree to change the Rental Agreement following the Hardship request, the Lessee may apply to the court to change the terms of the

## 19. Handling Complaints

- a) The Lessee may file a complaint under this Rental Agreement by contacting the Dispute Resolution Officer. Unless otherwise determined by the Dispute Resolution Officer, all complaints must be in writing to P O Box 100, Macarthur Square NSW 2560. Complaints will be dealt with and, where possible, resolved at operational level. On receipt of a written complaint from the Lessee, the Dispute Resolution Officer shall promptly reply (within 7 Business Days) acknowledging receipt of the complaint. The Dispute Resolution Officer shall immediately investigate the complaint and if necessary correspond directly with the Lessee in relation to the disputed matter.
- b) The investigation will consider the nature of the complaint, whether the Lessee complied with the Rental Agreement and any proposed resolution.
- c) The Dispute Resolution Officer will within thirty (30) business days of receipt of the notice of dispute from the Lessee or a longer period of up to 90 days if agreed by the Lessee, finalise the investigation of the dispute and report in writing to the Lessee the result of the review.
- d) Where the dispute is not resolved to the satisfaction of the Lessee, the Lessee has the right to refer the matter to the Director/Responsible Manager within thirty (30) days. If practical the Director/Responsible Manager will meet with the Lessee to consider the dispute. The Lessee will be entitled to be present at the meeting with or without legal representation and to be heard either in person or through the Lessee's legal representative.
- e) Subsequent to the meeting with the Lessee, the Director/Responsible Manager will have a maximum of fourteen (14) business days within which to consider the complaint and either accept, reject or resolve the dispute. The Director/Responsible Manager will notify the Lessee within twenty one (21) Business Days of the hearing of its decision.
- f) If the Lessee is dissatisfied with the determination of Director/Responsible manager then the Lessee may refer the complaint to the external dispute resolution service the Owner subscribes to. You must not file a complaint with the Owner's external dispute resolution service unless you first attempted to resolve the complaint/dispute with the Owner under its internal dispute resolution mechanism. The Owner's Credit Guide which was provided to the Lessee contains details of the external dispute resolution service provided by Credit Investments Ombudsman (CIO). CIO details are as follows:

CIO  
PO BOX A252  
SYDNEY SOUTH NSW 1235  
Telephone 02 9273 8455  
[www.cio.org.au](http://www.cio.org.au)  
Membership Number: M0006273

## **20. No Indemnity given by the Company**

- a) Except as may be provided or implied by consumer protection laws, the Owner will not be liable, in contract or tort for any direct, indirect, consequential or incidental damage to any person or property or business arising as a result of:
- i. the use of the Goods by the Lessee;
  - ii. either the Lessee or a third party assisting in the delivery and or installation of the Goods;
  - iii. any claim of faulty design, negligent or wrongful advice in relation to the Goods.

## **21. General**

### **Whole Agreement**

The Rental Agreement, the Schedule and any direct debit authority signed by the Lessee constitute the whole Agreement made between the Lessee and the Owner and no officer, servant or agent of the Owner has any authority to vary, add to or omit any of the Terms or Conditions.

### **Assignment of Rights**

The Owner reserves the right and the Lessee expressly agrees that the Owner may at any time assign both the benefits and obligations of the Rental Agreement to a third party and will advise the Lessee of such assignment when it occurs. The Lessee is not authorised to assign its rights under this Rental Agreement unless consented to by the Owner.

### **Notices**

The Lessee must inform the Owner of any change in the Lessee's circumstances, address or banking details which might affect the Rental Agreement. Failure to advise the Owner is a fundamental breach of this Rental Agreement.

Any notices under this Rental Agreement shall be in writing and served on the addresses set out in the Schedule. Notices shall be deemed received 3 days if posted and same day if emailed or faced provided that the transmission was carried out before 5 pm Monday to Friday.

A certificate signed by one of the Owner's authorised officers is adequate proof of the facts stated in it relating to the Rental Agreement and the rights and obligations arising under it in the absence of manifest error.

## **Governing Law**

The Rental Agreement is governed by any Federal Laws governing consumer leases and the laws of New South Wales. In the event of a dispute concerning the same the parties submit to the jurisdiction of the courts of New South Wales and any courts taking appeals from them and to the jurisdiction of the Federal Court.

## **Owner's Rights – No Waiver**

All the original rights and powers of the Owner under the Rental Agreement will remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof and the Owner will not be deemed to have waived any of the Owner's rights or any provision of the Rental Agreement or any notice given hereunder unless expressly waived in writing by the Owner and no waiver by the Owner of any breach by the Lessee of the Rental Agreement is deemed a waiver of any continuing or recurring breach.

## **Illegality**

If any term or condition or any part of any term or condition of the Rental Agreement or the application thereof is or becomes illegal, invalid or unenforceable then the same will be severed from the Rental Agreement and the remaining terms and conditions or any part of remaining term or condition will not be affected thereby.

## **Force Majeure**

If the performance by the Owner of any of the terms of the Rental Agreement is prevented or delayed by any Force Majeure beyond the reasonable control of the Owner, then the Owner will be excused from such performance for so long as the cause preventing or delaying performance persists. The Owner will, as soon as reasonably practicable, give the Lessee written notice and use reasonable endeavours to avoid or remove such cause of non-performance or delay and resume performance when such cause is avoided or removed.

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**Information Statement (Form 17) follows.**

## **Form 17      Information statement**

### **subsection 175 (1) of the Code regulation 105 of the Regulations**

#### **Things you should know about your consumer lease**

This statement tells you about some of the rights and obligations of yourself and your lessor. It does not state the terms and conditions of your lease.

#### **The lease**

##### **1    How can I get details of my lease?**

Your lessor must give you a copy of your consumer lease with this statement. Both documents must be given to you within 14 days after the lessor enters into the consumer lease, unless you already have a copy of the consumer lease.

If you want another copy of your lease write to your lessor and ask for one. Your lessor may charge you a fee. Your lessor has to give you a copy —

- within 14 days of your written request if the contract came into existence 1 year or less before your request; or
- otherwise within 30 days.

##### **2    What should my lease tell me?**

You should read your lease carefully.

Your lease should tell you about your obligations, and include information on matters such as —

- details of the goods which have been hired; and
- any amount you have to pay before the goods are delivered; and

- stamp duty and other government charges you have to pay; and
- charges you have to pay which are not included in the rental payments; and
- the amount of each rental payment; and
- the date on which the first rental payment is due and either the dates of the other rental payments or the interval between them; and
- the number of rental payments; and
- the total amount of rent; and
- when you can end your lease; and
- what your obligations are (if any) when your lease ends.

This information only has to be included in your lease if it is possible to give it at the relevant times.

If your lease does not tell you all these details, contact your credit provider's external dispute resolution scheme, or get legal advice, for example from a community legal centre or Legal Aid, as you may have rights against your lessor.

### **3 Can I end my lease early?**

Yes. Simply return the goods to your lessor. The goods may be returned in ordinary business hours or at any other time you and the lessor agree on or the court decides.

### **4 What will I have to pay if I end my lease early?**

The amount the lease says you have to pay.

If you have made rental payments in advance then it is possible that your lessor might owe you money if you return the goods early.

**5 Can my lease be changed by my lessor?**

Yes, but only if your lease says so.

**6 Is there anything I can do if I think that my lease is unjust?**

Yes. You should talk to your lessor. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact your credit provider's external dispute resolution scheme.

**EXTERNAL DISPUTE RESOLUTION IS A FREE SERVICE ESTABLISHED TO PROVIDE YOU WITH AN INDEPENDENT MECHANISM TO RESOLVE SPECIFIC COMPLAINTS. YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION PROVIDER IS COSL AND CAN BE CONTACTED AT 1800 138 422, [www.cio.com.au](http://www.cio.com.au) or PO BOX A252 SYDNEY SOUTH NSW 1235. CIO Membership Number: M0006273**

Alternatively, you can go to court. You may also wish to get legal advice, for example from a community legal centre or Legal Aid, and/or make a complaint to ASIC. ASIC can be contacted on 1300 300 630 or through ASIC's website at <http://www.asic.gov.au>.

**The goods**

**7 If my lessor writes asking me where the goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your lessor's request to tell your lessor. If you do not have the goods you must give your lessor all the information you have so they can be traced.

## **8 When can my lessor or its agent come into a residence to take possession of the goods?**

Your lessor can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

### **General**

## **9 What do I do if I can not make a rental payment?**

Get in touch with your lessor immediately. Discuss the matter and see if you can come to some arrangement.

You can ask your lessor to change your lease in a number of ways —

- to extend the term of your lease and reduce rental payments; or
- to extend the term of your lease and delay rental payments for a set time; or
- to delay rental payments for a set time.

## **10 What if my lessor and I can not agree on a suitable arrangement?**

If the lessor refuses your request to change the rental payments, you can ask your lessor to review this decision if you think it is wrong.

If the lessor still refuses your request, you can complain to the external dispute resolution scheme that your lessor belongs to. Further details about this scheme are set out below in question 12.

## **11 Can my lessor take action against me?**

Yes, if you are in default under your lease. But the law says that you can not be unduly harassed or threatened for rental

payments. If you think you are being unduly harassed or threatened, contact your credit provider's external dispute resolution scheme or ASIC, or get legal advice.

## **12 Do I have any other rights and obligations?**

Yes. The law will give you other rights and obligations. You should also **READ YOUR LEASE** carefully.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR CREDIT PROVIDER. YOU MUST ATTEMPT TO RESOLVE YOUR COMPLAINT WITH YOUR CREDIT PROVIDER BEFORE CONTACTING YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME. IF YOU HAVE A COMPLAINT WHICH REMAINS UNRESOLVED AFTER SPEAKING TO YOUR CREDIT PROVIDER YOU CAN CONTACT YOUR CREDIT PROVIDER'S EXTERNAL DISPUTE RESOLUTION SCHEME OR GET LEGAL ADVICE.**

**PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.**

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### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.



TM

# **1<sup>ST</sup> CHOICE** **Rentals**

*We put you first!*