

GENERAL CONDITIONS (RENTAL)

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GENERAL CONDITIONS

Introduction

The terms and conditions upon which you enter into a rental agreement with us are to be found in:-

- a) these General Conditions which contains the standard terms and conditions applicable to our rental agreements; and
- b) the rental agreement form between you and us setting out the details of your particular rental agreement.

The two documents should be read together. Please read these terms and conditions carefully. If you have any queries, please call us on 9492 8200.

Please note that a number of the expressions used in these Condition are defined in 27.

Part A - The goods

1. Ownership and interest

- 1.1 You must ensure that upon payment by us to the supplier of the goods we receive free and unencumbered title to the goods.
- 1.2 The goods always remain our property. You are only renting them.
- 1.3 You must make sure that any replacement part added to the goods becomes our property.
- 1.4 You must protect our interest in the goods. This includes:-
 - a) making it clear to others that we own them; and
 - b) paying when due all amounts, including rents, rates, taxes, principal and interest, payable in respect of any premises on which the goods are located or used or any rental or mortgage, charge or other security relating to those premises.
- 1.5 If we ask, you must obtain from any person who has an interest in any premises on which the goods are located or used (including any lessor, owner, mortgagee or chargee) a written acknowledgement of our ownership of the goods in terms acceptable to us.
- 1.6 Caterlink labels must not be removed or covered in any way. Failure to comply with this clause will void warranty.
- 1.7 You must not part with possession of the goods without our consent.
- 1.8 You must not give another person an interest in or any form of security over the goods or your rights under this agreement, or authorise anyone else to do so, without our consent.
- 1.9 We may enter into this agreement as principal or agent. We may also transfer the goods or our interest in this agreement, or give another person an interest in or form of security over any of them, without getting your consent. You agree that we may disclose any information or documents we consider necessary to help us exercise any of these rights.
- 1.10 The goods are to be used by the rentor and not to be re-hired or rented to third party. Failure to comply with this clause will void warranty.

2. Delivery and installation

2.1 You are responsible for obtaining the goods and having them:-

delivered; and

installed (if necessary); and

constructed (if necessary); and

put in good working order

as soon as possible after the goods are available for delivery.

2.2 You must take delivery of the goods immediately upon execution of this agreement or, if the goods are not then available, immediately upon the goods becoming available.

2.3 If the goods are delivered to you (where we have acquired the right to rent them to you) prior to the commencement date of the rental agreement:-

a) you shall be the bailee only of the goods until the commencement date; and

b) the provisions in this agreement relating to the use, maintenance, repair and insurance of goods shall apply to the bailment; and

c) there shall be added to the first rental due under this agreement an amount proportionate to such rental for the period of the bailment.

2.4 You must not attach the goods to any property without our consent. If they are attached to land, they do not become fixtures and we can still remove them in accordance with this agreement.

2.5 Subject to 1.3, the rental agreement may not include items in replacement of, or in addition to the goods (whether the items are of a class the same as, or of a class different from the goods).

3. Re-location

You must tell us if the place where the goods are used or ordinarily kept are changed.

4. Use

4.1 You must use the goods only in your business operations and for the purpose for which they are designed.

4.2 You must ensure that the goods are used in accordance with the supplier's instructions and recommendations and in compliance with all laws that apply to them or their use.

4.3 We cannot interfere with your use of the goods unless this agreement allows us to do so.

5. Maintenance

5.1 You must take proper care of the goods and keep them in good working order and in good repair (fair wear and tear excepted).

6. Access

6.1 You must allow us or our representative at any time to enter the place where the goods are located to:-

- a) inspect their condition; or
- b) check whether the terms of this agreement are being complied with; or
- c) exercise any of our rights under this agreement.

We will give you reasonable notice of entry.

7. Loss or damage

7.1 You must tell us if any goods are:-

- a) stolen; or
- b) lost; or
- c) destroyed; or
- d) damaged to such an extent that you or the insurer decides that repair is impractical or uneconomic.

7.2 We are entitled to receive all amounts which are payable to you by any insurer or other person because any of the things in 7.1 happens. If you receive those amounts, you hold them on trust for us.

7.3 You must pay us on the next payment date after any of the things in 7.1 happens, in addition to any rent instalment or other amounts due on that date:-

- a) the termination value of the affected goods on that date; less
- b) any money we have received from the insurer or any other person because the things in 7.1 happened.

7.4 The agreement terminates in relation to the affected goods when you make payment under 7.3 We will then notify you of the revised rent instalments and related financial institutions duty which are payable on the goods not affected.

7.5 If we receive money from the insurer or any other person after you have paid us the amount due under 7.3, we will refund to you, up to the amount you paid us, the amount we receive less any amount then payable by you to us under this agreement.

7.6 If any goods are damaged but not to the extent that 7.1(d) applies, you must restore them to the condition they were in before they were damaged.

Part B - Rent, costs and other amounts

8. Rent

You must pay to us at the address we notify to you from time to time the rent instalments and related financial institutions duty on the payment dates stated in the details. Once paid, these amounts are not refundable for any reason.

9. Duties, taxes, fees and charges

9.1: You must pay us when we ask you for it all stamp and other duties, fees, taxes and charges payable on:-

- a) our purchase of the goods; and
- b) this agreement; and
- c) any payment, receipt or other transaction arising out of our purchase of the goods or this agreement,

including any increase in the financial institutions duty stated in the details.

9.2: You agree to compensate us on demand if we determine that, as a direct or indirect result of a tax on goods and services or a similar tax taking effect, our costs of observing our obligations under this agreement are increased.

9.3 If we :

- a) reasonably decide that we are liable to pay GST on a supply made in connection with
 - a. this agreement, and
- b) have not priced the supply to GST,

then you agree to pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

GST means a goods and services or similar tax imposed in Australia.

10. No deductions from payments

You must not withhold any payment under this agreement, or make a deduction from it for any reason including because:-

- a) any goods are damaged, do not operate, or are not in your possession; or
- b) you claim to have a set-off, counterclaim, or other right against us or any other person.

11. Overdue payments

11.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.

11.2 The rate of interest to be applied to each daily balance is the default rate.

11.3 At intervals that we determine, or, if we do not make a determination, on the first day of each week, we may add any interest payable under 11.1 which is not paid when due to the amount for which you are liable. You will then be liable for interest under 11.1 on the total amount.

11.4 You must pay all interest payable under 11.1 or 11.3 when we ask you for it or at times specified by us.

11.5 Your obligation to pay an amount on the date it becomes due is not affected by 11.1 - 11.4.

11.6 If your liability under this agreement becomes the subject of a judgement or order, then you agree to pay interest to us on the amount of that liability as an obligation which is independent of the judgement or order. This interest accrues from the date the liability becomes due for payment both before and after the judgement or order until it is paid, at a rate that is the higher of the rate payable under the judgement or order and the rate in 11.2.

12. Indemnities

12.1 You indemnify us against, and must therefore pay us for, any liability, loss (including loss of profit), costs, charges or expenses (including liability, loss, costs, charges or expenses on account of funds borrowed, contracted for or used to fund any amount payable by us in connection with our purchase of any goods or this agreement and legal fees and expenses) arising from or incurred in connection with:-

- a) any item of the goods not being rented after you request them because of a default by you, or a condition to the renting of them not being satisfied or for any other reason, other than our wilful default; or
- b) our exercising or attempting to exercise any right or remedy under this agreement; or
- c) our doing or attempting to do anything you should have done under this agreement; or
- d) you not doing or not doing properly anything you should have done under this agreement; or
- e) our having to seize or store any goods; or
- f) our owning the goods (including registering our interest as owner); or
- g) a person being injured or killed or property being damaged directly or indirectly by any goods or their use or any environmental damage or liability arising directly or indirectly from the goods or their use; or
- h) a claim for patent, or trademark or copyright infringement, for strict liability, or for any other reason being made against us in connection with any goods or their operation; or
- i) this agreement terminating in relation to some or all of the goods before the end of the term stated in the details. Our loss under this paragraph (i) may include an amount we call "break costs". Break costs are an amount equal to our reasonable estimate of our loss arising as a result of a termination referred to in this paragraph (i). This loss can occur when the implicit rate is a fixed rate and usually arises because of changes in market interest rates.

12.2 Each indemnity is a continuing obligation, separate and independent from your other obligations (including your obligation under 16.4(c)). It continues after this agreement ends or is terminated. It is not necessary for us to incur expense or make a payment before we enforce a right of indemnity.

13. Part C - Insurance

13.1 You must insure at all times against:-

- a) damage to or loss of or destruction of any goods caused by fire, theft and accident, the other risks against which a prudent owner of property similar to the goods would insure and any other risks reasonably required by us for not less than the full replacement value of the goods; and
- b) public liability for bodily injury or damage to property arising in connection with any goods up to the amount approved by us.

13.2 The insurances must:-

- a) be in a form and substance and with an insurer satisfactory to us; and
- b) note our interests as owner of the goods.

13.3 You must not:-

- a) do anything, or fail to do anything, which would allow the insurer to refuse or reduce a claim; or
- b) vary the insurances without our consent; or
- c) enforce, conduct, settle or compromise any claim without our consent.

13.4 You must hold any proceeds which you receive under an insurance policy because any of the things in 7.1 happens in accordance with 7.2.

13.5 You must produce evidence of the insurance policies and payment of premiums whenever we ask for them.

14. Part D - Your other duties and obligations

14.1 You must give us any information we ask for about:-

- a) your financial position; or
- b) the goods or insurances relating to them.

14.2 Anything which you must do under this agreement must be done at your cost.

14.3 You must ensure that:-

- a) you do not become insolvent; and
- b) no present or future monetary obligation (whether as principal or surety) of you to us is not satisfied on time or at the end of its period of grace; and
- c) no change occurs in the business, assets or financial conditions which in any case in our reasonable opinion may have a material adverse effect on your ability to observe your respective obligations under this agreement; and
- d) no person who controls either you (if you are a company) as at the date of this agreement ceases to control you; and
- e) Whilst items are under warranty, all warranty issues are to be directed to the manufacturer. Once items are outside warranty, no maintenance work is to be carried out without prior approval by Caterlink
- f) you comply with any special provisions contained in the details.

15. Part E - What happens at the end of the Rental Agreement?

On the date specified as the end of the term in the details, you may:-

- (a) return the goods to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate; or
- (b) continue to rent the goods at the contracted rate per week.

If you choose option (b) the provisions in this agreement relating to the use, maintenance, repair and insurance of goods shall continue to apply.

16. Part F - What happens if you default?

16.1 The fundamental provisions of this agreement are that you must:-

- (a) pay all money due on time and as required by this agreement; and
- (b) do what you have to do under 1.4, 1.7, 1.8, 2.4, 5, 13 and 14.3.

16.2 You will repudiate this agreement and we may terminate the rental by notice to you if:-

- a) you do not comply with the fundamental provisions of this agreement; or
- b) your conduct indicates that you no longer intend to be bound by this agreement.

16.3 If there is a breach of a term which does not constitute a repudiation we may terminate the rental agreement by giving notice to you.

16.4 If we give you a notice of termination, you must immediately:-

- (a) return the goods to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate or allow us access to collect the goods and pay any and all costs incurred by us in collecting the goods; and
- (b) give to us any certificates of registration relating to them and a signed transfer of those certificates in favour of us or a person we nominate; and
- (c) if the termination occurred because of your repudiation, pay us the termination value for the goods calculated as at the day we give you notice, as liquidated damages for our loss of bargain. The termination value does not include additional amounts you may owe us under 12.1(d) because you did not comply with this agreement or 12.1(i) because we terminated this agreement. You will remain liable for those amounts in addition to the termination value; and
- (d) pay us all arrears of rent instalments, any rent instalment due on the day we give you this notice and other payments due up to and on that day.

17. Part G - About the Rental Agreement

You acknowledge that:-

- (a) you have not relied on our skill or judgement in deciding to enter into this agreement; and
- (b) we are entitled to correct any errors and complete blanks in this agreement; and
- (c) unless you have told us otherwise, you do not enter into this agreement as trustee of any trust or settlement; and

18. About the goods

You acknowledge that:-

- a) Subject to 19(a) you alone are responsible for examining the goods before accepting them and for satisfying yourself about them, including:-
 - I. their compliance with their description; and
 - II. their condition, suitability and fitness for your purposes; and
 - III. the validity of any manufacturer's, dealer's or supplier's warranties or guarantees and entitlements to patents; and
- b) you have not told us or anyone else the particular purpose for which you require the goods; and
- c) you are responsible for obtaining and maintaining at all times all licences or registrations required by law in connection with the goods or their use.

19. About legal warranties and limitations

You acknowledge that:-

- a) we have not made any representation, warranty or undertaking about the condition or quality of the goods, their suitability or fitness for your purposes, or their safety except those implied by the Trade Practices Act or other legislation (to the extent they apply and cannot be excluded);
- b) if the legislation referred to in 19(a) permits us to limit liability for breach of warranty or condition, our liability is limited to the full extent permitted by that legislation; and
- c) we are not liable for the death of or any injury to any person or loss or damage to property arising from the possession, operation or use of any goods (including any injury, loss or damage arising from our negligence).

Part H - Other requirements and acknowledgements

20. Further Assurances

You must do everything we ask to:-

- a) bind you under this agreement;
- b) protect or give effect to our rights or remedies under this agreement; and
- c) better secure to us any property over which we are granted a security interest.

This includes executing documents (including mortgages, charges and other security documents), lodging caveats and instituting, conducting and defending legal proceedings.

21 . Exclusion of laws

Any present or future law that varies your obligations under this agreement is excluded to the extent allowed by law if it affects our rights or remedies adversely.

22. Our Certificates

22.1 We may give you a certificate regarding any matter concerning this agreement including:-
any amount payable by you to us;

22.2 Any such certificate is sufficient evidence of the accuracy of its content, unless it is proved to be false.

23. Notices and other communications

23.1 Notices, certificates, consents and other communications in connection with this agreement must be in writing.

23.2. They must be:-

- a) left at the address last notified; or
- b) sent by prepaid post to the address last notified; or
- c) sent by facsimile to the facsimile number last notified.

23.3 If they are sent by post, they are taken to be received on the third day after posting.

23.4 If they are sent by facsimile, they are taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.

23.5 They take effect from the time they are received unless another time is specified in them.

24. Variation

A term of this agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

25. Business Days

If any date for payment of money under this agreement is not a business day, the money must be paid on the preceding business day.

26. Applicable law

26.1 This agreement is governed by the law of Western Australia.

26.2 You submit to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them.

26.3 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you, as the case may be, by delivering it to your address stated in the details (or any changed address notified to us) by leaving it there. This does not prevent any other method of service.

Part I- Meaning of words and interpretation

27. Meaning of words

Business Day

means any day (other than a Saturday or a Sunday) we are open for business in the place where we sign this agreement.

commencement date

means the commencement date specified in the details.

control

of a person includes the possession directly or indirectly of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly to control 40% or more of the total votes which might be cast at a general meeting of the person or to control the membership of the board of directors or other governing body of the person or to otherwise directly or indirectly direct or cause the direction of the management and policies of that person whether by means of trusts, agreement, the ownership of any interest in shares or stock of that person or otherwise.

details

means the details contained in the rental agreement form.

Default rate

means the default rate specified in the details.

Goods

means the equipment or goods described in the details.

includes or including

when introducing an item or a list of items, does not limit the meaning of the words to that or those items or to items of a similar kind.

Insolvent

means bankrupt, insolvent or insolvent under administration (each as defined in the Corporations Law), in receivership, in receivership and management, in liquidation, in provisional liquidation, under official management or administration, wound up, subject to any arrangement, assignment or composition or protected from any creditors under any statute.

Rental agreement form

means the rental agreement form between you and us setting out the details of your particular rental agreement.

Person

includes firm, partnership, committee, and incorporated and unincorporated bodies.

Related body corporate

has the meaning given in the Corporations Law.

Tax

means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine and expense in connection with any of them) other than those imposed on overall net income and "taxation" has a corresponding meaning.

Termination value

for any goods on a day means the present values on that day of the rent instalments and financial institutions duty which are still to fall due and which are attributable to those goods.

The rental

the rental by us to you of the goods under this agreement.

This agreement

means the rental agreement between you and us consisting of the rental agreement form and these General Conditions.

Us and we

means Chrystal & Co Pty Ltd (ACN 008 680 822) trading as Caterlink and its successors and assigns.

You and renter

means the person or persons named in the details as the renter, and if there are more than one, means each of them separately and every two or more of them jointly. "You" and "renter" includes your successors and assigns to whom we have consented under 1.8.

28. Interpretation

28.1 The singular includes the plural and vice versa.

28.2 A reference to:-

- a) a document includes any variation or replacement of it;
- b) law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them).
- c) any thing includes the whole and each part of it.
- d) legal fees and expenses means legal fees and expenses calculated on a full indemnity basis.

29. Before you sign the rental agreement

It is important that you understand the conditions of your rental agreement. We encourage you to call us on 9492 8200 if you have any questions or if you are not sure you can comply with all the terms and conditions.

You are welcome to discuss these terms with your legal or financial adviser.