



MASTER SUBSCRIPTION AGREEMENT

- PARTIES:
1. **AVEM QUIRKS PTY LTD**
(A.C.N 005 705 493)
 - 2.

One or more Subscribers may request the Owner to acquire goods (**the goods**) and to rent the goods to those Subscribers. This Master Subscription Agreement sets out the terms of any such purchase.

AGREED as follows.

- A. The Owner is not bound in any way to accept a request from a Subscriber that it acquire goods. Whenever the Owner does agree to acquire goods and supply them, the relevant Subscriber will enter into a Subscription agreement in relation to those goods (a subscription agreement). It must be substantially in the form of the Second Schedule unless the relevant Subscriber agrees another form with the Owner.
- B. If the Owner receives a request, the Owner or any one of the Owners' Managers may prepare, complete, sign and amend the relevant Subscription agreement, and all ancillary documents, on behalf of the Subscriber, where the Subscriber fails to do so.
- C. Each Subscriber will give the Owner a list of specimen signatures. The Subscriber is bound by anything signed with one of those signatures and anything done under Clause B.
- D. Clauses 1.1, 1.2, 3.1, 3.2, 3.3, 3.5, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.3, 9.1, 9.2 of the Subscription Agreement - Terms and Conditions apply to this Master Subscription Agreement as if they were part of this Master Subscription Agreement.

MASTER SUBSCRIPTION AGREEMENT ~ TERMS AND CONDITIONS

This sets out the terms and conditions that will be incorporated in each Subscription Agreement.

1. INTERPRETATION

Definitions.

1.1 In this subscription agreement, the following terms have these meanings, unless the context otherwise requires:

“**business day**” means any day (other than a Saturday or Sunday) the Owner is open for business in the place the Owner signs this rental agreement;

“**discount rate**” means, at any time, the discount rate per cent per annum which is 85% of the implicit rate;

“**environmental law**” means a law which has the protection of the environment as one of its purpose or effects;

“**goods**” means:

(a) each item described in the schedule; or

(b) if the actual item in relation to which the Owner has made or agreed to make a payment is not the same as that item, the actual item, and includes, when supplied with or fitted to the goods, replacement parts, accessories and attachments;

“**government agency**” means a government, any government department or an authority or a person who administers an applicable law;

“**insolvent**” means bankrupt, insolvent, in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition or protected from any creditors under any statute; “**overdue rate**” means, at any time, the overdue rate per cent per annum specified in clause 3.5 hereof;

“**Owner**” means the entity identified as the “Owner” in the schedule;

“**Subscriber**” means the entity identified as the “Subscriber” in the schedule;

“**schedule**” means the schedule in the form set out in the Second Schedule to the Master Subscription Agreement identified in the schedule (as amended) (or any other form approved by the Owner) and which forms part of this Subscription agreement;

a “**tax**” means a tax, levy, impost, deduction, charge, stamp duty, financial institutions duty, any credit or debit tax, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them);

“**termination amount**” means, for the goods on a day, the net present value as at that day of each installment of rent that is not yet due for payment, each discounted back, from the date on which it would otherwise have fallen due for payment, at the discount rate; and

“**subscription agreement**” means the agreement constituted by these terms and conditions and the schedule.

General

1.2

In this Subscription agreement unless the contrary intention appears:

(a) a reference to this agreement or another instrument includes any variation or replacement of any of them;

(b) a reference to any law includes legislation and other instruments under it and consolidations, amendments, re-enactments or replacements of any of it;

(c) the singular includes the plural and vice versa;

(d) the word person includes a firm, body corporate, an incorporated or unincorporated association or an authority;

(e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;

(f) an agreement, representation, warranty in favour of or on the part of two or more persons is for the benefit of them and binds them, as the case may be, jointly and severally; and

(g) a reference to a clause is a reference to a clause of this Subscription agreement.

2. THE GOODS

2.1 Ownership

The Subscriber:

(a) acknowledges that the goods always remain the property of the Owner and that it only has a right to use them under the terms of this Subscription agreement;

- (b) must not place, or allow to be placed, on the goods any plates or marks that are inconsistent with the ownership of the Owner. If the Owner asks the Subscriber it must put plates on the goods that state that the Owner owns them;
- (c) must not part with possession of the goods without the consent of the Owner;
- (d) must not give another person an interest in or any form of security over this Subscription agreement or the goods, or authorize anyone else to do so, without the consent of the Owner; and
- (e) must not attach the goods to any property without the consent of the Owner. If the goods are attached to land, they do not become fixtures and the Subscriber must ensure that the Owner's ownership in the goods is acknowledged by those persons who have an interest in the place where the goods are located.

2.2 Delivery and Installation

The Subscriber:

- (a) is responsible for;
 - (i) obtaining the goods;
 - (ii) having them delivered and installed; and
 - (iii) having them put in good working order; and
- (b) is responsible for examining the goods carefully before accepting them as well as a pre-site network testing. The Subscriber must comply with this Subscription agreement, including making payments to the Owner.

2.3 Use and Maintenance

The Subscriber must:

- (a) use the goods only in its business operations and for the purpose for which they are designed;
- (b) ensure to the best of their ability that the goods are used, serviced and maintained in accordance with the manufacturer's or supplier's instructions and recommendations and the Owner's or any insurer's reasonable requirements. Operating and care instruction will be given to the site operator on delivery to site by the Avem representative.
- (c) tell the Owner in writing if the place where the goods are used or ordinarily kept is changed from the place set out in the schedule;
- (d) promptly give the Owner any information concerning the location or condition of the goods that the Owner asks for;
- (e) at the Subscriber's own expense take proper care of the goods and keep them in good working order and in good repair (fair wear and tear excepted);
- (f) not say or imply that the Owner will pay for any work done to the goods;
- (g) ensure that any replacement part, accessories and attachments becomes the property of the Owner;
- (h) protect the interests of the Owner in the goods, making clear to others that the Owner owns them;
- (i) comply with all the laws relating to the goods and their operation and use including environmental laws; and
- (j) if the goods are capable of registration, keep the goods registered.

2.4 Access

The Subscriber must allow the Owner (who is to give reasonable notice of entry) or the Owner's representative at any time to enter the place where the goods are to:

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

3. SUBSCRIPTION AND OTHER PAYMENTS

3.1 Subscription

The Subscriber must pay for subscribing the goods, at the times and in the amounts set out in the schedule.

Taxes

- 3.2 The schedule sets out the amounts of certain taxes that the Owner and the Subscriber expect will be payable in respect of the Subscriber. The Subscriber must pay these amounts with the Subscription. If the amounts set out in the schedule for these taxes are less than the amounts that the Owner must pay in respect of the rent, the Subscriber must pay the Owner the difference upon notice from the Owner.

No deductions From Payments

3.3

Unless the goods are damaged and inoperable for a period greater than 4 weeks after Avem Quirks has received notification of the damage, the Subscriber must not withhold any payment under this Subscription agreement or make a deduction from it for any reason including because:

- (a) the goods are damaged, do not operate, or are not in the Subscriber's possession;
- (b) the Subscriber claims to have a set-off, counterclaim, or other right against the Owner or any other person;
- (c) any act, matter, thing or default referable to the maintenance or servicing of the goods; or
- (d) of any tax.
- (e) The amount of the payment must be increased, if the law provides that the Subscriber must make a deduction or withhold money from a payment, so that the Owner receives the amount that it would have received if the Subscriber had not had to make a deduction or withholding.
- (f) Should the goods be damaged and inoperable for a period greater than 4 weeks after Avem Quirks has received notification from the Subscriber then payment for that item may be withheld until the goods are repaired or replaced.

3.4 Indemnities

The Subscriber must pay the Owner on demand the amount of any loss, liability, cost or expense (including, for example, any tax or amount in addition to the amounts the Subscriber is already obliged to pay under clause 3.2, any legal costs or any break or unwind cost) which the Owner says it or any officer has incurred, suffered or sustained or will incur, suffer or sustain in connection with:

- (a) the Owner exercising a right under this Subscription agreement;
- (b) the Owner doing anything the Subscriber should have done under this Subscription agreement;
- (c) the Owner not doing what the Subscriber should have done under this Subscription agreement;
- (d) the Owner having to seize or store the goods;
- (e) a person being injured or killed or property being damaged directly or indirectly by the goods or their use;
- (f) this Subscription agreement terminating in relation to some or all of the goods before the end of the term;
- (g) the use of the goods by the Subscriber for any purpose other than that stated by the Subscriber to the Owner;
- (h) any change in the rate of tax or method of tax collection or payment applying to the Owner;

Each indemnity is a continuing obligation, separate and independent from the Subscribers other obligations. It continues after this rental agreement ends or is terminated. It is not necessary for the Owner to incur expense or make a payment before it enforces a right of indemnity.

In no event will either party be liable to the other party, its employees, agents or contractors for any loss or other damage to revenue, profits or goodwill or other special, incidental, indirect or consequential damages of any kind resulting from a party's performance or failure to perform pursuant to the terms of this Subscription agreement including without limitation, any interruption of business, whether or not resulting from breach of a term of this Subscription agreement, even if that party has been advised of the possibility of such damages.

Overdue Payments

3.5

If the Subscriber does not pay an amount of money when it is due (unless as allowed under Clause 3.3), it must pay interest on the overdue amount, calculated for the period it is unpaid. The overdue interest rate will be the implicit rate of interest plus 2.0%. This interest accrues daily, on the amount that remains unpaid at the end of each day. The Subscriber must pay all interest payable when the Owner asks for it or at the times specified by the Owner.

Commission

3.6

The Subscriber acknowledges that the amount that it must pay for the goods may include amounts for any commission, fees or other remuneration that the Owner has paid or will pay on account of this Subscription agreement, including any commission payable to any broker, agent, dealer or other person who introduces the Subscriber to the Owner or the Owner to it. The Subscriber also acknowledges that the Owner may receive commission, fees or other remuneration for introducing it to another person for any purpose relating to this Subscription agreement.

4. LOSS OR DAMAGE

4.1 Goods Totally Damaged or Lost

The Subscriber must inform the Owner in writing immediately if any of the goods are:

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

4.2 Consequences

- (a) The Owner is entitled to receive all amounts which are payable to the Subscriber by any insurer or other person because any of the things in clause 5.1 happens. If the Subscriber receives those amounts, the Subscriber holds them on trust for the Owner.
- (b) The Subscriber must pay on the date within seven days after any of the things in clause 5.1 happens, in addition to any rent or other amounts due on that date:
 - (i) the termination amount of the affected goods on that date; less
 - (ii) any money the Owner has received from the insurer or any other person because the things in clause 5.1 happened.

4.3 Termination

This Subscription agreement terminates in relation to the affected goods when the Subscriber makes payment under clause 5.2 and then the Owner must notify the Subscriber of the revised payment which are payable on the goods not affected.

4.4 Refund

If the Owner receives money from the insurer or any other person after the Subscriber has paid the amount due under this rental agreement, the Owner will refund to the Subscriber, up to the amount it paid the Owner, the amount the Owner received less all money then owing (actually or contingently) by the Subscriber under this Subscription agreement.

4.5 Partial Damage

If any of the goods are damaged but the Subscriber must restore them to the condition they were in before they were damaged.

5. RETURN OF GOODS

On the date specified as the end of the term in the schedule, the Subscriber must:

- (a) return the goods to the Owner in good working order as per attached 'Annexure A', to a place the Owner nominates; and
- (b) give the Owner any certificates of registration relating to the goods and a signed transfer of those certificates in favour of the Owner or a person the Owner nominates.

6. DEFAULT AND REPUDIATION

6.1 Fundamental Provisions

The fundamental provisions of this Subscription agreement are that the Renter must:

- (a) pay all money due on time and as required by this rental agreement;
- (b) comply with clauses 2.3, and 3; and
- (c) not be or become insolvent.

6.2 Repudiation

The Subscriber will repudiate this Subscription agreement and the Owner may terminate it by notice to the Subscriber if:

- (a) the Subscriber does not comply with the fundamental provisions of this Subscription agreement; or
- (b) the Subscriber's conduct indicates that it no longer intends to be bound by this Subscription agreement.

6.3 Termination

If the Owner gives notice of termination to the Subscription, it must immediately:

- (a) return the goods to the Owner in good working order, and in good repair (fair wear and tear excepted) to a place the Owner nominates;
- (b) give the Owner any certificates of registration relating to the goods and a signed transfer of those certificates in favour of the Owner or a person the Owner nominates;
- (d) pay the Owner all arrears of payments any payments due on the day the Owner gives the Subscribers this notice and other payments due up to and on that day.

.6.4 No Other Amounts

The Owner need not pay the Subscriber any proceeds the Owner receives from re-subscribing or any proceeds from selling the goods.

7. SUBSCRIBER'S ACKNOWLEDGMENTS

7.1 Subscriber's Acknowledgment

The Subscriber acknowledges

that:

- (a) the Owner is not the manufacturer of the goods;
- (b) in choosing the goods the Renter did not rely on:
 - (i) anything that the Owner may have told it about them; or
 - (ii) any information that the Owner may have given it about them;
- (c) in deciding to sign this rental agreement the Renter did not rely on:
 - (i) anything that the Owner may have told it about; or
 - (ii) any information that the Owner may have given it about, and its rights duties under it, or its effect on the tax position or its treatment for accounting purposes of the Renter;
- (d) this Subscription agreement may be subject to certain principal and agency arrangements, end value insurance, end value buy back arrangements or other arrangements between the Owner and certain third parties and that these matters may not be, and are not required to be, disclosed to the Subscriber; and
- (e) this Subscription agreement only becomes binding when both parties have signed it even if the Subscriber has paid an installment.

7.2 No Warranties

Except for any warranty, representation or assurance implied by law so far as it cannot be excluded, the Owner does not give any warranty, representation or assurance as to the quality, fitness for purpose or safety of the goods

7.3 No Liability for Others

The Owner is not responsible for, and has no liability for, anything that may have been said to the Subscriber, or any information that may have been given to it, about the goods or the rental agreement or its effect by a person who introduced them to each other or the manufacturer of the goods.

No Liability for Damage

7.4 So far as the law allows, the Owner is not liable for:

- (a) any injury or loss that the Renter or any other person suffers; or
- (b) any damage to, or loss or destruction of, property belonging to the Subscriber or anybody else, arising out of the possession, operation or use of the goods or their repair or maintenance.
The Subscriber must pay all these amounts, as well as all other losses, liabilities, costs and expenses in connection with the possession, operation or use of the goods by it or any other person.
In any case, so far as the law allows, the Owner's liability to the Subscriber is limited to:
 - (c) repairing the goods or paying for their repair; or
 - (d) replacing the goods with the same or equivalent goods or paying the cost of doing either.

The Owner may choose which of paragraph (c) or (d) applies in a particular case.

The Subscriber agrees that this clause applies whether or not the *Trade Practices Act 1974* (Cth) or a law of a State or Territory that corresponds to either of those laws applies.

7.5 Extension/Continuing Obligation to Pay

On the expiration of the term of this Subscription agreement the rental agreement shall be automatically renewed for a term of 90 days unless the Subscriber gives written notice of non-renewal to the Owner at least 90 days prior to the expiry date and then complies with Clause 5 of this Subscription agreement. Following automatic renewal under this Clause any holding over after the additional 90 day term shall be on a month to month basis and unless goods are returned under Clause 6 rent continues to be payable by the Subscriber.

7.6 Subscriber's Expense

The Subscriber will do at its own expense everything that it is obliged to do under this Subscription agreement or under any law.

8. TRUSTEE PROVISIONS

8.1 Where the Subscriber is a Trustee

If the Subscriber is a trustee, it acknowledges that this rSubscription agreement is binding on it both personally and in its capacity as trustee.

8.2 The Trust

If the Subscriber is a trustee, the Subscriber assures the Owner that:

- (a) the Subscriber is entering into this Subscription agreement for a proper purpose of the trust;
- (b) the Subscriber has the power and authority under the trust to enter into this Subscription agreement; and
- (c) the Subscriber has the right to be indemnified fully out of the trust property, before the beneficiaries of the trust, for all liabilities that it incurs under this Subscription agreement.

9. NOTICES

9.1 Notices to the Owner

A notice to the Owner under this rental agreement must be in writing and:

- (a) left at the address shown in the schedule;
- (b) sent by pre-paid post to the address shown in the schedule; or
- (c) sent by facsimile to the number shown in the schedule.

9.2 Notices to the Subscriber

- (a) a notice, demand or certificate to the Subscriber must be:
 - (i) left at the address shown in the schedule;
 - (ii) sent by pre-paid post to the address shown in the schedule ; or
 - (iii) sent by facsimile to the number shown in the schedule.

9.3 Time of Receipt

A notice given to a person in accordance with this Subscription agreement is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered before 4:00 pm on a business day, otherwise on the next business day;
- (b) if sent by pre-paid post, on the day of actual delivery if delivered before 4:00 pm on a business day, otherwise on the next business day; and
- (c) if transmitted by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4:00 pm on a business day, otherwise on the next business day.

10. VARIATION OF AGREEMENT

If the Subscriber requests a variation of this Subscription agreement the Owner may, in its absolute discretion agree and forward an Acknowledgment of Variation. Once the Subscriber signs this document this Subscription Agreement shall be varied accordingly with all other terms and conditions continuing. Should the Owner not receive a copy of the Acknowledgment of Variation within seven days of signing the Owner may elect not to be bound by it.

11. LAW AND JURISDICTION

11.1 Governing Law

This Subscription agreement is governed by the law in force in the place where the Owner's office shown in the schedule is located.

11.2 Jurisdiction That Applies to This Subscription Agreement

The parties submit to the non-exclusive jurisdiction of the courts that exercise jurisdiction in the place specified in clause 11.1 in relation to any proceedings about or in connection with this Subscription agreement.