

**FleetPartners Group, FleetPartners includes; Fleet Holding (NZ) Limited, Truck Leasing Limited (TLL), FleetPartners NZ Trustee Limited as trustee for the FleetPartners NZ Trust**, duly incorporated Companies having registered offices at Level 30, Vero Centre, 48 Shortland Street, Auckland.

### **1. Effect of Agreement and Acknowledgements**

- 1.1 The Lessee has inspected the goods and enters into this Agreement in reliance upon that inspection and the Lessee's own judgement as to the quality of the goods and the fitness of the goods for the Lessee's purposes.
- 1.2 The Lessee acknowledges that FleetPartners does not guarantee that the goods are of any particular quality.
- 1.3 The Lessee is aware that FleetPartners is a finance company and does not rely on FleetPartners's skill or judgment in relation to the goods.
- 1.4 Nothing in this Agreement implies that Part 9 of the Personal Property Securities Act 1999 ("PPSA") applies to the Agreement. Clauses 1.6 and 1.7 are included in case it is held that these provisions of PPSA do apply.
- 1.5 If any provision of this Agreement is inconsistent with any non-mandatory provision of Part 9 of the PPSA, then those provisions of PPSA shall not apply to the extent of that inconsistency, and any powers given by PPSA to a secured party that has priority over all other secured parties may be exercised by FleetPartners, whether or not FleetPartners is a first ranking secured party.
- 1.6 In addition, sections 121, 127, 129, 131, 132, 133 and 134 of PPSA do not apply in respect of this Agreement of the Lessee's rights in respect of the goods.

### **2. FleetPartners Owns the Goods**

- 2.1 FleetPartners owns the goods, and title will not pass to the Lessee.

### **3. Payment by the Lessee of Amounts Due**

- 3.1 The Lessee will pay FleetPartners all amounts required by the Principal Terms, when they are due.
- 3.2 The Lessee will pay by automatic payment or will give FleetPartners an authority for direct debit if FleetPartners requires, or will otherwise pay FleetPartners where directed.

### **4. Lessee to Insure Goods**

- 4.1 The Lessee will fully insure the goods, in the names of the Lessee and FleetPartners.
- 4.2 The Lessee will forward the policy and premium receipts to FleetPartners, if FleetPartners requires.
- 4.3 If FleetPartners receives any insurance money, FleetPartners may use it to:
  - (a) pay for repairing the damaged goods; or
  - (b) repay any of the money payable by the Lessee under this Agreement.

### **5. Lessee to Keep Goods in Good Order and Repair**

- 5.1 The Lessee will keep the goods in good order and repair.
- 5.2 If the Lessee alters the goods, the alterations will belong to FleetPartners.

### **6. Lessee not to Sell, Charge etc Goods or Assign Agreement**

- 6.1 The Lessee will not sell, hire out or lose possession of the goods.
- 6.2 The Lessee will not assign the Lessee's rights under this Agreement, unless FleetPartners consents.
- 6.3 The Lessee will not give any security interest over the goods to anyone other than FleetPartners.

### **7. Lessee to Comply with Laws Affecting the Goods**

- 7.1 The Lessee will keep the goods registered or licensed if required, will comply with all laws in relation to the goods, and, if a motor vehicle, will maintain a current Warrant of Fitness and will not permit an unlicensed driver to drive it.

### **8. Lessee to Notify Change of Address, Status or Serial Number**

- 8.1 The Lessee will notify FleetPartners in writing at once of any change of:
  - (a) the Lessee's address; or
  - (b) the place where the goods are kept; or
  - (c) any registration or serial numbers for the goods.
- 8.2 If the Lessee becomes liable to be registered for the purpose of the Goods and Services Tax Act 1985, or ceases to be so registered, the Lessee will notify FleetPartners of any such change, and of the Lessee's GST registration number, as appropriate.

### **9. FleetPartners may Inspect Goods**

- 9.1 The Lessee will allow FleetPartners or its agent to inspect the goods at all reasonable times.

### **10. Protection of FleetPartners's Interests**

- 10.1 If FleetPartners incurs any expense in respect of the goods or in performing any obligations of the Lessee which the Lessee has not performed, the Lessee will repay those expenses to FleetPartners when required.
- 10.2 The Lessee irrevocably appoints FleetPartners and every FleetPartners senior manager, severally to be the attorney of the Lessee to apply for any new Certificate of Registration for the goods, and to do on behalf of the Lessee anything else that the Lessee ought to do under this Agreement.

### **11. Default Interest**

- 11.1 If the Lessee does not make payment before the close of banking business on its due date, the Lessee will, upon demand by FleetPartners, pay to FleetPartners interest on the amount unpaid on a daily basis, calculated at the default rate. The default rate is the Annual Interest Rate shown in the Principal Terms plus 5% per annum.

### **12. Repossession of Goods**

- 12.1 FleetPartners can repossess and sell the goods, or terminate this Agreement and sell the goods by 10 business days written notice to the Lessee if:
  - (a) the Lessee does not perform any of the provisions of this Agreement;
  - (b) distress, execution or a warrant to seize is issued against, or a lien is claimed, in respect of the goods or the goods are otherwise at risk;
  - (c) any Court judgement against the Lessee remains unsatisfied for more than 7 days;
  - (d) the Lessee is a company and there is a transfer of any of the shares in the Lessee which effectively alters the control of the Lessee, unless FleetPartners consents;
  - (e) the Lessee becomes insolvent;
  - (f) a receiver is appointed in respect of any assets of the Lessee;
  - (g) an application is made for the liquidation of the Lessee, or the Lessee passes a resolution to go into liquidation.
- 12.2 If FleetPartners terminates this agreement, all unpaid amounts will become immediately payable, even if not otherwise yet due.

12. FleetPartners may itself purchase the goods at any sale under clause 12.1, in full or part satisfaction of the debt, and if the goods are attached to any other goods, FleetPartners may remove them without being liable to the Lessee.
- 12.4 FleetPartners is not liable if, for whatever reason, less notice than required by clause 12.1 is given before FleetPartners exercises its powers, or if FleetPartners advises the Lessee of the result of any sale of the goods by FleetPartners later than required by PPSA.

**13. Early Termination by Lessee**

- 13.1 If this Agreement is terminated or expires:
- (a) the Lessee shall immediately deliver the goods to FleetPartners; and
  - (b) the Market Residual Value of the goods shall be determined, which will be:
    - (i) the net proceeds of sale of the goods by FleetPartners; or
    - (ii) if the goods have not been sold, their market value as reasonably assessed by FleetPartners.
- 13.2 If this Agreement is terminated and an Assumed Residual Value is shown in the Principal Terms, then:
- (a) if the Market Residual Value is less than the Assumed Residual Value, the Lessee shall immediately pay FleetPartners the difference, plus interest at the default interest rate from the time the agreement was terminated or expired; but
  - (b) if the Market Residual Value is greater than the Assumed Residual Value, FleetPartners shall pay the Lessee the difference.
- 13.3 Nothing in Sections 117 and 119 of PPSA entitles the Lessee to claim any greater amount than the amount (if any) payable to the Lessee under clauses 13.1 and 13.2.

**14. Cancellation by Lessee**

- 14.1 The Lessee can only cancel this Agreement by giving FleetPartners notice in writing if it is entitled by law to cancel. Cancellation will not reduce the Lessee's liabilities.

**15. Variation of Agreement**

- 15.1 The Lessee and FleetPartners can only agree to vary this Agreement in writing.

**16. Offsets by FleetPartners**

- 16.1 If the Lessee does not make any payment when due, FleetPartners can debit the amount to any other account of the Lessee with FleetPartners, or deduct it from any amount FleetPartners owes the Lessee.

**17. Resident Withholding Tax**

- 17.1 FleetPartners is an exempt organisation for the purposes of the provisions of the Income Tax Act 1994 imposing Resident Withholding Tax, so that the Lessee must not deduct Resident Withholding Tax from payments made to FleetPartners. FleetPartners's exemption/IRD number is 10-664-314.

**18. Notices**

- 18.1 Notices under this Agreement may be sent by FleetPartners to the Lessee's address as shown in this Agreement.

**19. Collection, Use and Disclosure of Information**

- 19.1 The Lessee and each Guarantor authorise FleetPartners to collect such information from third parties, including credit reference agencies, as may be required either in connection with their application for finance, or in connection with their relationship with FleetPartners.
- 19.2 The Lessee and each Guarantor acknowledge that:
- (a) any default by them under this Agreement may be disclosed to credit reference agencies by FleetPartners; and
  - (b) FleetPartners and ANZ National Bank Limited ("ANZ") may use their information to inform the Lessee or any Guarantor of other FleetPartners and ANZ products and services; and
  - (c) under the Privacy Act 1993, the Lessee and each Guarantor has the right of access to and correction of their personal information held by FleetPartners.

**20. Guarantors**

- 20.1 Each Guarantor
- (a) Guarantees (jointly and severally if more than one) repayment to FleetPartners of all amounts payable by the Lessee pursuant to this Agreement, and the performance of all of the Lessee's obligations under this Agreement.
  - (b) Acknowledges that FleetPartners has entered into this Agreement with the Lessee at the request of the Guarantor, that FleetPartners might not have done so without the Guarantor's guarantee, and that FleetPartners doing so is a benefit to the Guarantor.
  - (c) Agrees that if the Lessee does not pay any amount, or perform any obligation, under this Agreement, the Guarantor will do so on demand.
  - (d) Agrees that if for any reason any amounts payable by the Lessee under this Agreement or any collateral securities are not recoverable by FleetPartners, whether as a matter of law or as a matter of fact, the Guarantor will indemnify FleetPartners against any resulting loss, and will pay the amount of any such loss to FleetPartners as a principal debtor and on demand.
  - (e) Agrees that their obligations as a Guarantor are absolute and unconditional, and will not be released or in any way affected by:
    - (i) this Agreement being unenforceable or otherwise defective; or
    - (ii) any variation or release of this Agreement, or any other Guarantor; or
    - (iii) any concessions by FleetPartners to the Lessee or to any other Guarantor; or
    - (iv) the insolvency, bankruptcy or liquidation (as appropriate) of the Lessee or any other Guarantor; or
    - (v) any other act, omission, or rule of law which would, were it not for this clause, release a guarantor or indemnifier; and irrevocably waives any rule of law to a different effect.
  - (f) Acknowledges that the Guarantor is not a "Debtor" for the purposes of the Personal Property Securities Act 1999 ("PPSA") and, to the extent permissible by law, waives any notices or rights of a Debtor under PPSA to the extent inconsistent with these terms.
  - (g) Acknowledges that the Guarantor has either had independent legal advice prior to executing these terms or, if that has not occurred, that is solely the Guarantor's own choice freely made, and as a result the Guarantor irrevocably waives any rights which the lack of that independent advice might otherwise have given the Guarantor.