

## 1. APPLICATION OF THESE CONDITIONS

- (a) These conditions, subject to any variations agreed to in writing, apply to all supplies made by VPS (or any Related Body Corporate specified in a relevant invoice or contract) to the entity specified in the invoice or the contract as the Hirer. These conditions, in their present form or as amended from time to time by VPS, pursuant to these conditions, together with the relevant credit application form (if applicable), invoices, the details appearing on a Purchase Order and any other terms and conditions governing the use of the Portal, form these terms and conditions ("**Terms and Conditions**").
- (b) VPS is entering into these Terms and Conditions as agent for Pact and Pact Group Company (as principal) for the hire of the Equipment. Each reference in these Terms and Conditions to VPS is to Pact and the relevant Pact Group Company hiring the Equipment or supplying the goods or services (as applicable) and where there is more than one relevant Pact Group Company, to each of them severally.
- (c) The Terms and Conditions are for the benefit of each Pact Group Company (including the benefit of any right of VPS, obligation to the Hirer, limitation of liability of VPS and representation by the Hirer) and any Loss or expenses suffered by a Pact Group Company in connection with these Terms and Conditions will be deemed to be suffered by VPS.

## 2. INCONSISTENCIES

All hires of equipment made to Hirers by VPS are made on these Terms and Conditions to the exclusion of all other terms. The Hirer agrees that to the extent of any inconsistencies, the following order of priority will prevail:

- (a) the VPS Account Application Form;
- (b) these Terms and Conditions;
- (c) the Portal terms and conditions; and
- (d) any Purchase Order terms and conditions.

## 3. HIRE OF EQUIPMENT

- (a) The Hirer must submit a Purchase Order via the Portal, or in a form agreed to in writing by VPS. VPS reserves the right to refuse any Purchase Order, within 2 working days after receipt. Any quotation given by VPS lapses if not accepted by the Hirer within 30 days. The Hirer must have an active account with VPS in order to hire any Equipment from VPS.
- (b) While VPS will use all reasonable endeavours to make Equipment available for hire by the date specified in a Purchase Order, VPS does not, unless otherwise agreed in writing, guarantee availability on that date and is not liable for any Loss resulting from late or early availability.
- (c) Equipment will be added to and deducted from the Equipment held by the Hirer and the Quantity on Hire when;
  - (1) Equipment is hired to the Hirer ("**Issue**");
  - (2) hired Equipment is returned to VPS at a Depot authorised to accept that Equipment ("**Return**");
  - (3) there is an approved electronic / manual transfer of hired Equipment by the Hirer ("**Sending Party**") to another Hirer ("**Receiving Party**") or by a Receiving Party to the Sending Party; or
  - (4) there is an adjustment under these terms.An item of Equipment will not be recorded as returned until it is returned to VPS or fees have been paid under clause 5.
- (d) A Sending Party must establish that the transfer of any Equipment is accepted by the Receiving Party and obtain VPS's approval to the electronic transfer. Unless otherwise agreed by VPS, a transfer will be rejected unless it is notified to VPS by an approved VPS transfer document, the Portal and/or manual docket. VPS may refuse to issue Equipment to a Hirer or refuse to approve a transfer in its sole discretion. Variation by VPS of a Hirer's Quantity on Hire or sending an invoice does not itself constitute approval of a transfer.
- (e) The Hirer must not part with possession of any Equipment unless;
  - (1) it is returned to VPS;
  - (2) it is transferred to another Hirer's account with VPS's written approval; or
  - (3) the Hirer keeps and makes available to VPS on demand approved VPS electronic documentation, VPS electronic records or other control records approved by VPS identifying the name and address of the person in possession of the Equipment, the date of the change of possession, the quantity and type of Equipment, and the terms (if any) on which the Hirer parts with possession. The Hirer must ensure that those terms are at all times subordinate to and will be overridden by these terms. If VPS requests, the Hirer must provide to VPS (at its expense) a copy of all or any part of such records.
- (f) The Hirer:
  - (1) acknowledges that its purpose in hiring Equipment is to store and transport Produce (or other goods agreed by VPS in writing) and for no other purpose;
  - (2) must not Re-Use any Equipment, unless VPS gives its prior written consent;

- (3) acknowledges and agrees that VPS will only Issue Equipment in orders of minimum order quantities, or such other quantities, as VPS determines from time to time;
  - (4) acknowledges the Equipment is issued to the Hirer for one use only and can only be transferred to another party via transfer for 1 (one) use only.
- (g) The Hirer must return all Foldable Containers in a Folded State.

#### 4. EQUIPMENT

- (a) The Hirer acknowledges that:
- (1) VPS is dependent on other parties for quotations, supply, delivery dates, specifications and other things relevant to the Equipment or, where the Equipment is manufactured by VPS, to the materials used for their manufacture; and
  - (2) those other parties may reserve the right to alter the design or specifications of Equipment or materials supplied to VPS, and may deliver goods or materials to VPS which vary to a minor degree from their specifications.
- (b) Subject to clause 8, VPS is not in any way liable to the Hirer for any liability which may arise from changes to Equipment that is to be supplied, or failure to meet specifications, where the changes or failure are caused by other parties implementing the changes in or varying the specifications of the Equipment or materials delivered by those other parties to VPS.
- (c) Subject to clause 8, VPS is not liable to the Hirer for any information or other items not manufactured by VPS or a Related Body Corporate.

#### 5. CHARGES

- (a) The Hirer must pay:
- (1) the agreed charges in respect of each item of Equipment and any service supplied by VPS (including as specified in any Fee Schedule);
  - (2) all other charges agreed by the Hirer and VPS from time to time;
  - (3) any applicable stamp duty, GST or other duties; and
  - (4) any other amounts owing under these terms, without deduction or set-off, to VPS within 7 days of the date of VPS's invoice to the Hirer. Payment does not affect the Hirer's rights under clause 3(e).
- (b) If the Hirer fails to pay any invoice by the due date, VPS may require the Hirer to pay interest to VPS on the overdue amount at a rate of 10% per annum commencing from the date payment fell due until payment of the overdue amount is received in full. If any amount becomes overdue, all amounts recorded on the Hirer's account are deemed to be immediately due and payable. The Hirer must pay all costs and expenses (including legal costs on a solicitor and own client basis) which may be incurred by VPS in the recovery or attempted recovery of the overdue amounts.
- (c) Each invoice issued to the Hirer may, unless otherwise agreed, set out:
- (1) the type of equipment hired to the Hirer and the Quantity on Hire on the first day of the period covered by the invoice ("**opening balance**");
  - (2) subsequent variations due to Issuing of Equipment by VPS, transfers onto the Hirer's account, transfers off the Hirer's account, returns to VPS and any other relevant adjustments ~~adjustments~~ during the period of the invoice;
  - (3) the type of Equipment hired to the Hirer and the balance of the Quantity on Hire on the date of the invoice ("**closing balance**"); and
  - (4) the total charges payable by the Hirer for the period of the invoice.
- (d) If for any reason the Quantity on Hire is, or purports to be, either zero (0) or negative, the Hirer will not be able to continue to transact via the Portal and will need to contact VPS.
- (e) Each invoice may include adjustments to the Equipment held by the Hirer or the Quantity on Hire in the current or previous invoice periods:
- (1) made under clause 5(c);
  - (2) resulting from incorrect entries in any previous invoices; or
  - (3) as otherwise agreed.
- (f) The Hirer must, prior to the due date for the relevant invoice, give written notice to VPS if it objects to any item or calculation in that invoice, and VPS may take that objection into account in a subsequent invoice to the Hirer. If the Hirer fails to give notice within the time prescribed or makes payment of the relevant invoice in full, it is taken to have accepted the contents of the invoice. Payment of subsequent invoices from VPS incorporating any adjustments by VPS resulting from an objection constitutes a final determination of the objection between VPS and the Hirer.
- (g) VPS may provide the Hirer with 14 days' written notice of VPS's intention to amend any of the charges or fees specified in the Fee Schedule including introducing additional charges or fees. If the Hirer does not accept the amended fees and charges, the Hirer must, within 14 days after VPS has provided the notice of the changes to the charges and the fees or Fee Schedule, notify VPS in writing to close the Hirer's account and the Hirer must immediately return all

Equipment and pay all amounts owing. If the Hirer does not respond to the notice within 14 days, the Hirer is deemed to have accepted the amendments to the Fee Schedule or otherwise as contained in the notice.

- (h) VPS may amend these Terms and Conditions without any notice to the Hirer. The Hirer's continued hire of products and services, and use of the Portal is deemed acceptance of any amended terms and conditions.

## 6. OWNERSHIP, LOSS, CONDITION AND REPOSSESSION OF EQUIPMENT

The Hirer acknowledges that each item of Equipment has a special value to VPS in that VPS repairs, maintains, handles and otherwise administers the circulation of all Equipment. The Hirer expressly agrees to all the following matters as a condition of VPS agreeing to hire Equipment to the Hirer:

- (a) despite any other clause in these Terms and Conditions, VPS remains the owner of the Equipment at all times. No person is entitled to use, dispose of or otherwise deal with Equipment in any way that is inconsistent with VPS's ownership or these Terms and Conditions. Payment of any compensation, or any other circumstance or event, does not constitute or result in any transfer of property or interest in the Equipment from VPS;
- (b) Risk in Equipment passes to the Hirer as soon as it obtains possession. If:
- (1) the Hirer establishes, to VPS's satisfaction, that Equipment on hire is destroyed ("**Destroyed Equipment**"), the Hirer must pay VPS an amount equal to the then current value, as reasonably determined by VPS, of that quantity of new Equipment. The Hirer remains liable to VPS for fees and charges in respect of Destroyed Equipment until payment as required by this clause has been made.
  - (2) the Hirer establishes, to VPS's satisfaction, that Equipment on Hire is lost ("**Lost Equipment**") the Hirer must pay VPS an amount advised by VPS. The Hirer remains liable to VPS for fees and charges in respect of Lost Equipment until payment required by this clause has been made.
  - (3) the Hirer subsequently recovers possession of Equipment in respect of which Destroyed Equipment or Lost Equipment fees and charges have been paid, or if VPS retakes possession of Equipment for which VPS considers that the Hirer has paid such fees or charges, VPS will refund to the Hirer the amount of any such fees or charges, after deducting any costs of recovery or retaking possession and an amount equal to the amount of hiring charges not paid by the Hirer and which would otherwise be due and owing if VPS had not agreed to treat the Equipment as Destroyed Equipment or Lost Equipment.
  - (4) the Equipment is on hire for a period greater than 3 months, VPS will deem the Equipment as Lost Equipment and the Hirer will be required to compensate VPS for the Lost Equipment.
  - (5) a Hirer finds the Lost Equipment following the payment of charges due under clause 6(b), VPS will only recognise any reversal of those charges if the Equipment is recovered within 3 months from due date of those charges. Any reversal of any such charge will be less any accrued charges for the period of time that the Equipment was Lost Equipment;
- (c) Where Equipment which, in VPS's reasonable opinion, is contaminated, rendered unusable or damaged beyond reasonable repair is returned to VPS, that Equipment will be treated as Destroyed Equipment; and
- (1) the Hirer must pay fees and charges for the Destroyed Equipment in accordance with clause 6(b) and any costs of disposal; and
  - (2) any obligation on VPS to repair under clause 10 will not apply;
- (d) VPS has the right to immediate possession of all Equipment, whether on hire or not, and may take possession of any Equipment immediately upon reasonable notice to the Hirer. The Hirer gives VPS an irrevocable licence to enter property occupied by the Hirer at any time without committing any trespass and to take any steps VPS considers reasonably necessary or appropriate to obtain possession of Equipment. The Hirer must pay VPS's actual costs of obtaining possession of Equipment and must indemnify VPS from and against all Loss suffered and or incurred by VPS as a result of exercising its rights under this clause. VPS may credit the Hirer's account with Equipment so recovered. If VPS takes possession of any Equipment which the Hirer demonstrates, to VPS's reasonable satisfaction, was then on hire to the Hirer, VPS will, at the Hirer's request, make available the same quantity of Equipment to the Hirer, provided the Hirer demonstrates to VPS's reasonable satisfaction that the Hirer would then have no more Equipment than its Quantity on Hire;
- (e) the Hirer must not permit or cause any Equipment to, and must take all reasonable steps to ensure that Equipment does not, become in VPS's reasonable opinion contaminated or rendered unusable for any reason including, but not limited to, toxic, radioactive or any other dangerous substance, pests, chemicals, liners, labels, wrapping or securing materials. If any Equipment becomes contaminated or is rendered unusable, the Hirer must notify VPS immediately. VPS may in its sole discretion, either:
- (1) direct the Hirer to return the contaminated or unusable Equipment to a specified Depot, and clause 6(b) shall apply; or
  - (2) direct the Hirer to dispose of or destroy that Equipment at the Hirer's cost in an appropriate manner as required by law and provide to VPS reasonably satisfactory evidence that this has been done;
- (f) VPS may charge the Hirer additional charges for removing any items outlined in clause 6(e).

## 7. NO PASSING OF PROPERTY

- (a) VPS's rights under this clause secure VPS's right to receive the fees and charges and all other amounts owing to VPS under these Terms and Conditions or any other contract. All payments received from the Hirer must be applied in accordance with section 14(6)(c) of the PPSA.
- (b) In addition to any rights VPS may have under Chapter 4 of the PPSA, VPS may exercise its rights to repossession under clause 6(d) above.
- (c) The Hirer also indemnifies VPS from and against all Loss suffered and or incurred by VPS as a result of exercising its rights under this clause. If there is any inconsistency between the VPS's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails. The Hirer must do anything reasonably required by VPS to enable VPS to register its security interest with the priority that VPS requires and to maintain that registration.
- (d) The Hirer acknowledges and warrants that VPS has a security interest (for the purposes of the PPSA) in the Equipment at all times. The Hirer must do anything reasonably required by VPS to enable VPS to register its security interest with the priority VPS requires and to maintain that registration. The security interest arising under this clause attaches to the Equipment when the Hirer has possession of the Equipment and the parties confirm that they have not agreed that any security interest arising under this clause attaches at any later time. If there is any inconsistency between the VPS's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails.

## 8. ENFORCEMENT OF SECURITY INTEREST

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under these Terms and Conditions, the Hirer agrees that the following provisions of the PPSA will not apply; section 95 (notice of removal of accession) to the extent that it requires VPS to give a notice to the Hirer; section 121(4) (enforcement of liquid assets – notice to grantor); section 130 (notice of disposal) to the extent that it requires VPS to give a notice to the Hirer paragraph 132(3)(d) contents of statement of account after disposal; subsection 132(4) (statement of account if no disposal); section 135 (notice of retention) section 142 (notice of collateral); section 143 (reinstatement of security agreement)

## 9. NOTICES UNDER PPSA

VPS does not need to give the Hirer any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

## 10. CONDITION and SUITABILITY OF EQUIPMENT

The Hirer acknowledges and represents to VPS that it is the Hirer's responsibility to inspect and check the condition, state of repair and fitness for the Hirer's particular purpose of the Equipment immediately before taking possession of the Equipment. The Hirer acknowledges that, to the extent permitted by law, VPS gives no warranty or representation about the condition, state of repair or fitness for purpose of any item of Equipment. If any Equipment on hire is damaged, the Hirer must immediately return it to VPS. So far as the damage has resulted from what VPS in its sole discretion considers to be fair wear and tear, VPS will not charge for the repair, but otherwise the Hirer must pay VPS an amount equal to a reasonable charge for repairing the Equipment.

## 11. RELEASE AND INDEMNITY

Except where legislation which cannot be excluded (such as the Competition and Consumer Act 2010 (Cth)) would make this clause illegal, or where the inclusion of this cause would otherwise make VPS liable to penalty:

- (a) the Hirer releases VPS from any claim that is made against VPS for damages or otherwise in respect of:
  - (1) any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of any Equipment while on hire to the Hirer or in its possession;
  - (2) the exercise by VPS or any of its rights (including but not limited to, under clause 6(d)); or
  - (3) the performance or delay in performance by VPS of any of its obligations to the Hirer.
- (b) the Hirer indemnifies VPS and agrees to keep VPS indemnified against any and all claims, demands, losses, damages and costs that VPS incurs or may incur as a result of or arising out of:
  - (1) a breach by the Hirer of any of the Hirer's obligations under these terms;
  - (2) any act of default of omission or wilful conduct or negligence by the Hirer;
  - (3) the exercise by VPS of any of its rights (including, but not limited to, under clause 6(d));
  - (4) any action or activity which infringes copyright in the Transaction Information or the Portal; or
  - (5) any use of the Portal or Transaction Information which is outside the limited licences granted in these terms.

These indemnities include all costs and expenses incurred by VPS in investigating or defending any claim, and legal costs on a solicitor and own client basis.

- (c) The Hirer acknowledges and agrees that:
  - (1) it has an obligation to take all necessary steps to mitigate any and all losses it may incur as a result of any non-compliance with these Terms and Conditions; and
  - (2) VPS liability (if any) under these Terms and Conditions falls solely on VPS and any claim by the Hirer under these Terms and Conditions must be solely against VPS.

## 12. USE OR INTERFERENCE WITH MARKS

The Hirer must not use, interfere with, remove, cover up or deface any trade mark, name, trade name, device or any other identifying mark, feature or printing on any Equipment or Transaction information.

## 13. FORCE MAJEURE

- (a) Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage or breakdown in machinery ("**Force Majeure Event**").
- (b) The Party affected must notify the other party as soon as possible of such circumstance. During the continuance of such circumstance the obligations of the affected party, to the extent that they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.
- (c) If a Force Majeure Event continues for a period of 90 days, this agreement will automatically terminate.

## 14. HANDLING INSTRUCTIONS

All items of Equipment must be used and operated by the Hirer in a safe and proper manner and strictly in accordance with any handling instructions or guidelines and manufacturer warranty requirements applicable to that type of Equipment as published in VPS product brochures from time to time, copies of which are available on the Portal, by contacting VPS Customer Service Centre on 1800 316 697 or [vps.support@viscount.com.au](mailto:vps.support@viscount.com.au).

## 15. TERMINATION

- (a) VPS may at any time give the Hirer written notice terminating the hire of Equipment and/or any licence granted under these terms.
- (b) On receipt of a notice terminating the hire of Equipment, the Hirer must deliver to VPS (at no cost to VPS) within 7 days of the date the notice, or by any later date specified in the notice, all Equipment held by the Hirer.
- (c) VPS may treat any Equipment not so delivered as Lost Equipment for the purposes of clause 6(b)(2), or may seek to recover the Equipment from the Hirer. If VPS chooses to recover the Equipment, the Hirer will indemnify VPS for its cost of recovery, including legal costs on a solicitor and own client basis.
- (d) The Hirer's obligations under this clause survive termination of the hire of Equipment.

## 16. INTELLECTUAL PROPERTY

Any Intellectual Property Rights, technical information, knowledge or processing methods at any time transmitted either orally or in writing by VPS to the Hirer shall remain the property of VPS and shall be considered absolutely confidential by the Hirer who shall not use them for any purpose nor sell transfer or divulge them in any manner to anyone without the prior written consent of VPS.

## 17. LICENCE

- (a) VPS hereby grants the Hirer a limited non-transferable non-exclusive royalty free licence in Australia to access and use the Portal but only:
  - (1) for the purpose of receiving Transaction Information; and
  - (2) solely for Normal Use.
- (b) VPS grants the Hirer a limited non-transferable non-exclusive royalty free licence in Australia to make:
  - (1) a copy of the Transaction Information in the same format as supplied to the Hirer by VPS, for archival (including bank-up) internal record keeping, auditing or financial account purposes, provided that the Hirer does not remove or alter any Electronic Rights Management Information or any Technological Protection Measures; and
  - (2) a copy of the Transaction Information in paper format produced through the normal operation of a computer program, provided that the Hirer does not remove or alter any Electronic Rights Management Information.
- (c) The limited licences granted to the Hirer by VPS in these terms do not permit the Hirer to:
  - (1) reproduce the Transaction Information (or any substantial part thereof) otherwise than in accordance with the limited licence granted to Hirer by clause 17(b); or
  - (2) to Communicate the Transaction Information (or any substantial part of it) to the public except to:
    - a. VPS;
    - b. the Hirer's legal or accounting advisors or auditors;
    - c. the Hirer's Related Bodies Corporate; or
    - d. in respect of a particular item of Transaction Information, to the counterparty to the transaction to which that Item of Transaction Information relates;
  - (3) alter or remove any Electronic Rights Management Information or any Technological Protection Measures;
  - (4) make an adaptation of the Transaction Information; or
  - (5) do anything outside of Australia in relation to the Transaction Information.

## 18. TAXES AND DUTIES

- (a) The Hirer is liable for all taxes (including GST), duties, levies and other government fees and charges in relation to the Hire Equipment. Unless specified otherwise, prices quoted do not include such taxes (including GST) or duties.
- (b) If, and to the extent that, any supply of Equipment is a taxable supply within the meaning of the GST Law, the invoice will be increased to include GST payable by VPS in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price. The parties agree that: the parties must be registered persons within the meaning of the GST Law; VPS must provide tax invoices and if applicable adjustment notes to the Hirer in the form prescribed by or for the purposes of the GST Law; and costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

## 19. INSURANCE

The Hirer is responsible to insure the Equipment for loss and damage from the time of Issue until the Equipment has been returned to a Depot. The level of insurance must be for the full replacement cost of the Equipment. Upon request by VPS, the Hirer must provide written evidence of any such insurance policies.

## 20. RELATIONSHIP OF THE PARTIES

Except as expressly provided, nothing in these Terms and Conditions is intended to constitute a fiduciary relationship or an agency, partnership or trust, and no party has authority to bind any other party.

## 21. RECORD KEEPING AND AUDIT

The Hirer must keep accurate records within the Portal. The Hirer authorises VPS to generate, maintain and use information concerning or relating to the Hirer's use of the Portal and Transaction Information issued or released to the Hirer.

## 22. PALLETS

VPS retains the right of possession of any pallets used for delivery of the Equipment, and the Hirer agrees to indemnify VPS in relation to the hire and replacement costs of any pallets not returned in good order and condition to VPS within 28 days of delivery of the Equipment, unless otherwise agreed in writing by VPS. The Hirer may have a Loscam or CHEP account for the provision of pallets, and the onus is on the Hirer to have an active account with a pallet hirer to facilitate the transfer of Equipment.

## 23. GIVING NOTICES

A notice to be given or an invoice to be issued under these terms may be given or issued by:

- (a) leaving it at or posting it to the address last notified in writing, and is taken as given at the time it is left or, if posted, on the next Business Day after it is posted;
- (b) sending it over the internet to the Hirer's email address last notified in writing to VPS and is taken as given;
  - (1) if sent prior to 4.00pm at the close of that Business Day;
  - (2) if sent after 4.00pm, at the commencement of the next Business Day;
- (c) sending it by facsimile to the party's facsimile number last notified in writing to the other party and is taken as given when transmitted to the other party; or
- (d) making it available via the online Portal, and is taken as given when transmitted to the other party.

## 24. ASSIGNMENT AND NOVATION

The Hirer must not assign or novate this agreement, these Terms and Conditions, or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of VPS. A change in control of the Hirer will be deemed an assignment for the purposes of these Terms and Conditions.

## 25. STOCKTAKES

The Hirer must allow VPS, within 7 days of VPS's request, to enter premises occupied by the Hirer to conduct stocktakes of Equipment, and must assist VPS in doing so.

## 26. PRIVACY

The Hirer must comply with the Privacy Law with respect to any act done or practice engaged in by the Hirer for the purposes of these Terms and Conditions, including, without limitation, in relation to the collection, use disclosure, storage, destruction or de-identification of Personal Information. The Hirer must also enter into a contractual arrangement to this effect with any subcontractor or third party to which it discloses Personal Information in connection with these Terms and Conditions.

## 27. MISCELLANEOUS

- (a) A Pact Group Company may set-off any amounts owed by it to the Hirer under these Terms and Conditions against amounts owed by a Pact Group Company to the Hirer on any account whatsoever. The waiver by VPS of any provision, or breach of any provision, of the Terms and Conditions is not to be construed as a waiver of any other provision.

- (b) If any provision of the Terms and Conditions is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- (c) These provisions (including the details appearing on the Purchase Order and Portal) constitute the entire agreement between the Hirer and VPS and replace any previous terms. No modification is binding in relation to the Terms and Conditions unless agreed to in writing by VPS.
- (d) Any dispute arising out of the Terms and Conditions is governed by the laws of the State or Territory of Australia where the order was received by VPS and the Hirer submits to the jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.

## 28. DEFINITIONS

"Business Day" means a day that is not a Saturday, Sunday or public holiday in the place to which a notice or invoice is sent under this agreement;

"Communicate" has the same meaning as that term is defined in the Copyright Act 1968 (Cth);

"Depot" means a VPS depot that is made available to the Hirer from time to time for the collection and return of Equipment;

"Electronic Rights Management Information" has the same meaning as that term in the Copyright ACT 1968;

"Equipment" means items of property lent or hired out by VPS from time to time;

"Fee Schedule" means a schedule to these Terms and Conditions, if any, which specifies the charges applying to the hire of Equipment;

"Foldable Container" means an item of Equipment which is foldable;

"Folded State" means in relation to a Foldable Container, the state of the Foldable Container after its walls have been folded inward so that the walls lie parallel with the base of the Foldable Container;

"GST" has the meaning given in the GST Law;

"GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

"Hirer" means any person, firm or corporation to whom Equipment is lent or hired by VPS and its legal personal representatives, successors, permitted assigns, agents and any other designated representative;

"Intellectual Property Rights" means any copyright, trade mark, design, patent, semiconductor or circuit layout rights and any application for registration or registration of those rights;

"Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property;

"Normal Use" means the normal use of the Transaction Information for the internal management of the Equipment the Hirer has obtained under these terms;

"Pact" means Pact Group Holdings (Australia) Pty Ltd (ACN 107 959 900);

"Pact Group" means all of Pact Group Companies and "Pact Group Company" means Pact or any Related Body Corporate of Pact from time to time.

"Portal" means any service provided by VPS, including an online portal, which permits the provision of Transaction Information from any VPS transaction accounting database system to the Hirer;

"Produce" means fresh fruit, fresh vegetables or other fresh foodstuffs and other perishable goods supplied or transported by Hirers;

"PPSA" means the Personal Property Securities Act 2009 (Cth);

"Personal Information" has the meaning set out in the Privacy Act 1988 (Cth);

"Privacy Law" means the Privacy Act 1988, including (without limitation) the 13 Australian Privacy Principles (APPs) in the Privacy Act 1988 (Cth) and all relevant Australian privacy laws, including the Health Privacy Principles under state legislation (e.g. those contained in the Health Records Act 2001 (Vic) or the privacy provisions contained in Part 2 of the Health Records (Privacy and Access) Act 1997 (ACT)), the Privacy Regulations 2013 and the Privacy (Credit Reporting) Code;

"Purchase Order" means any request by a Hirer, submitted via the Portal, for the hire of Equipment but excludes any terms and conditions purported to be included by that Purchase Order;

"Quantity on Hire" means, in respect of any day, the quantity of Equipment lent or hired by VPS to the Hirer;

"Related Body Corporate" has the meaning given in the Corporations Act 2001 (Cth);

“Re-Use” means the use of Equipment for the storage and/or transportation of Produce or other goods after it has been used for that purpose, and before it has been returned to VPS;

“Technological Protection Measure” has the same meaning as that term is defined in the Copyright Act 1968 (Cth);

“Transaction Information” means any invoice, data, and compilation of data, report or reports format that is provided by or on behalf of VPS in any material form; and

“VPS” means Viscount Pooling Systems Pty Ltd (ACN 618 166 742) and where applicable Pact and Pact Group Company identified in the invoice and/or hire, supply of Equipment, goods or services pursuant to these Terms and Conditions from time to time.