

Terms & Conditions – NZ Vision Intelligence

1. Definitions and Interpretation

- 1.1 In these Terms and Conditions:
- a) **Agreement** means the contract between Vision and Hirer in relation to the hire of Equipment, which is governed by these Terms and Conditions together with the Hirer's Trade Account Application and quotation provided by Vision (if any).
 - b) **Business Hours** are 9.00am to 3.00pm on weekdays other than public holidays.
 - c) **Cycle Billing Period** means the period between the expiry of the Initial Period and the return or collection of the Equipment, during which the Hirer will be billed on a periodic basis for the hire of the Equipment. The Cycle Billing Period will commence automatically following the expiration of the Initial Period and will continue indefinitely until the Equipment is returned or collected in accordance with this Agreement.
 - d) **Delivery of the Equipment** is deemed to have occurred when it is collected by Hirer or transported to a location at the request of Hirer and Delivered has a corresponding meaning.
 - e) **Equipment** means the goods hired by Hirer from Vision in accordance with this Agreement.
 - f) **GST** means goods and services tax as that term is defined in the Goods and Services Tax Act 1985.
 - g) **Hirer** means the person, company or other legal entity hiring the Equipment from Vision. Where the context permits, it includes Hirer's employees and contractors.
 - h) **Initial Period** means the fixed initial hire period agreed between Vision and Hirer together with any agreed extension to this period.
 - i) **Rates** means the rates notified by Vision to Hirer from time to time.
 - j) **Rental Period** means:
 - i. the Initial Period; and
 - ii. the Cycle Billing Period.
 - k) **Use** means use, installation, removal, storage, maintenance or transport by or on behalf of Hirer.
 - l) **Vision** means Vision Intelligence Limited, a company incorporated in New Zealand, company number 8385602, whether acting itself or through one or more of its agents.
- 1.2 Every provision of this Agreement is independent of the others. Any provision which is prohibited or unenforceable in any jurisdiction will be deemed removed to the extent of the prohibition or unenforceability without invalidating the remaining provisions. Unless stated to the contrary, the rights under this Agreement are in addition to any rights that may be conferred by general law.
- 1.3 A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 1.4 This Agreement will be governed by the laws of New Zealand and Vision and Hirer submits to the non-exclusive jurisdiction of the courts of that place.
- 1.5 These Terms and Conditions supersede all previously issued Terms and Conditions. Vision is not bound by any terms and conditions contained in any document issued by the Hirer whether issued before or after this Agreement, except Annexure A (if applicable).
- 1.6 Nothing in these Terms and Conditions restrict or modify any remedy available by

law (including the Fair Trading Act 1986 and the Consumer Guarantees Act 1993) where that law precludes any restriction or modification being made.

2. Rates and Rental Period

- 2.1 During the Rental Period Hirer must pay Vision a hire fee calculated in accordance with the Rates.
- 2.2 The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by Vision or otherwise notified to Hirer from time to time. Vision may require payment of some or all of the hire fee prior to Delivery. Hirer must notify Vision within seven (7) days of any errors with the invoice.
- 2.3 Not receiving an invoice will in no way relieve Hirer of its responsibility for the payment of amounts due. Failure to pay amounts due within seven (7) days of a debt becoming due for payment or such term otherwise agreed to in writing by Vision will be considered a breach of this Agreement. Hirer must pay Vision on demand on a full indemnity basis, all costs incurred in recovering any amount owed to Vision by Hirer.
- 2.4 Hirer is not permitted to claim a reduction in hire fees for Equipment returned before the end of the Initial Period, and except as provided for in clause 8.1, Vision will not refund any hire fees prepaid by Hirer for any period outside of the Rental Period.
- 2.5 Hirer may not deduct or withhold from any part of the hire fee payable by it any amount which is owing or is claimed to be owing, and whether as retention money or otherwise, to Hirer by Vision or any other person.
- 2.6 The hire fees, and all other consideration payable under this Agreement, do not include GST. If a supply made under this Agreement, or as a result of any breach of a term of this Agreement, is subject to GST:
- a) the recipient must pay the supplier an amount equal to the GST payable by the supplier, at the same time as the consideration for that supply is given; and
 - b) the supplier agrees to give the recipient a tax invoice for that additional amount upon payment.
- 2.7 Hirer agrees to pay Vision a service charge on all past due balances at the rate of 1.5% per month or part thereof from the due date for payment until the payment is made.

3. Delivery, Pick up, Installation and Removal

- 3.1 Hirer may pick up the Equipment or retain Vision to deliver the Equipment.
- 3.2 If Hirer retains Vision to deliver, pick up, install, or remove the Equipment, Vision will do so as the agent of Hirer. All Rates assume collection and return of Equipment by Hirer from and to Vision's depot. Delivery, installation, dismantling and pickup charges are extra and will be quoted upon request.
- 3.3 If Vision is delayed or prevented from delivering or removing the Equipment to or from any location for any reason beyond its reasonable control, it may charge Hirer additional delivery charges. The additional delivery charges will be based on the duration of delay, or the time spent by Vision in unsuccessfully attempting to deliver or remove the Equipment and will be calculated for every period of 15 minutes (or part) using the rate published on www.visioni.co.nz from time to time.
- 3.4 If Hirer elects to return the Equipment rather than retaining Vision to collect the Equipment, the Equipment must be returned

during Business Hours, and to either the Vision location from which Hirer initially collected the Equipment, or such other location as nominated by Vision.

- 3.5 Before the Equipment is collected by Vision, Vision will issue Hirer with an "off hire" number. The Hirer should retain the "off hire" number until the Equipment is collected by Vision. The "off hire" number confirms the expiration of the Rental Period.
- 3.6 Hirer is liable for all costs, expenses, damages or loss (including consequential loss) which may arise as a direct or indirect result of the delivery, pick up, installation or removal of the Equipment by Vision as agent for Hirer, and whether caused by Hirer, Vision, or any other person.

4. Receipt of Equipment

- 4.1 On Delivery of the Equipment, Hirer must satisfy itself that:
- a) it has received the Equipment in good condition in the quantity ordered;
 - b) it, and any employee or contractor using the Equipment, has been fully instructed in the use of the Equipment and understands its proper use and means of installation and removal; and
 - c) the Equipment is suitable and fit for the purpose for which Hirer intends to use it and must notify Vision within 24 hours if it is not so satisfied. Failing such notification, Hirer will be deemed to have accepted the Equipment in the condition in which it was provided and as suitable and fit for the purpose for which Hirer intends to use the Equipment.

5. Use of the Equipment

- 5.1 Hirer must ensure that the Equipment is Used strictly in accordance with Vision's instructions and any procedures recommended by Vision from time to time.
- 5.2 Hirer must at all times keep the Equipment in good condition and must not, without Vision's prior written consent alter or make additions to the Equipment, or deface, remove or conceal any Vision logo, identifying mark or number, or indication of Vision's ownership of the Equipment.
- 5.3 Hirer must at all times ensure that the Equipment is Used in a safe manner, and must not deliberately damage, abuse or mistreat Equipment or allow Equipment to be deliberately damaged, abused, or mistreated.
- 5.4 Hirer acknowledges that it is responsible for properly securing the Equipment for the purpose of transportation so as to ensure its safe transport to and from the location where the Equipment will be used by Hirer.
- 5.5 If any damage, loss, theft or destruction of the Equipment occurs, whether Hirer was responsible or not, Hirer must, immediately notify Vision and provide full details of the damage, loss theft or destruction.
- 5.6 Hirer must ensure that Use of the Equipment is at all times strictly in accordance with:
- a) all applicable laws, and
 - b) any relevant industry usage, custom and standards for goods similar to the Equipment.
- 5.7 Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the Use of the Equipment, including its installation or removal. Without limiting Hirer's obligations under this clause, Hirer must obtain all permits required under the Building Act 2004 and any relevant planning, environment or health and safety legislation, and must ensure that its personnel are

appropriately inducted, trained and supervised so as to ensure the safe and lawful Use of the Equipment.

6. Damaged and Missing Equipment

6.1 If Equipment is returned or collected in a condition which in the reasonable opinion of Vision renders it unusable for hire, or if Equipment is stolen or missing, Hirer must pay Vision on demand the cost of replacement or repair of the Equipment calculated in accordance with the relevant Damaged & Lost Materials price list as published on Vision's website, www.visioni.co.nz from time to time. In no circumstances will title to the Equipment or any part of it pass to Hirer.

6.2 Other than for the cost of replacing or repairing the Equipment, which will be dealt with under clause 6.1, Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by Vision arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or is missing.

7. Damage Waiver

7.1 When a damage waiver charge (at Vision's then current rate) is paid by the Hirer, Vision will not make a claim against the Hirer for any accidental damage to the Equipment during the period covered by the charge. This damage waiver is conditional upon the Hirer paying a \$1000 excess per claim event, and only applies when the Hirer has Used the Equipment in accordance with this Agreement.

8. Vision's Rights

8.1 Vision may terminate this Agreement and recover the Equipment at any time on 7 days written notice to Hirer. If Vision exercises this termination right, Vision will refund Hirer for any hire fees received by Vision which relate to Equipment hired outside the Rental Period, less a deduction for reasonable expenses incurred by Vision in connection with the recovery and/or transport of the Equipment.

8.2 Vision may enter any premises where the Equipment or any part of it is, or believed to be located for the purpose of:

- a) inspecting or testing the Equipment,
- b) protecting Vision's rights or interest in the Equipment,
- c) ensuring compliance with any law, including any law relating to health and safety, or
- d) exercising its right to take possession or control of the Equipment.

8.3 If Hirer in any way fails to perform or breaches any provision of this Agreement, becomes insolvent or in Vision's reasonable opinion is likely to become insolvent, Vision may at its discretion do all or any of the following:

- a) terminate this Agreement upon 7 days' written notice;
- b) retake possession of the Equipment, holding Hirer fully liable for all hire fees; and
- c) require Hirer to pay liquidated damages equal to 2 weeks' hire fees (which the parties agree to be a reasonable estimate of the costs incurred by Vision in order to retake possession of the Equipment).

8.4 Vision shall be entitled to set off against any payment due from it to Hirer hereunder any amount due and payable by Hirer to Vision on any account.

8.5 Nothing in this clause 8 limits any rights

Vision may have at any time:

- a) in respect of the Equipment;
- b) against Hirer; or
- c) against any other person.

9. Warranties and guarantees

9.1 Vision and the Hirer acknowledge and agree that the Hirer is "in trade" (as defined in the Consumer Guarantees Act 1993 and the Equipment is supplied to and acquired by the Hirer in trade, and that the statutory guarantees and other provisions of that Act do not apply to this Agreement.

9.2 Subject to clause 1.6 and to the maximum extent permitted by law:

- a) Vision excludes all conditions, warranties, guarantees or representations (expressed or implied) in relation to this Agreement or its subject matter, including all warranties and guarantees as to the quality, suitability or fitness of the Equipment for any particular purpose;
- b) Vision is not responsible to Hirer or to any other person for any loss (including consequential loss), damage, or injury, caused by, resulting from or in any way connected with, the Use of the Equipment, howsoever caused, including due to Vision's negligence, breach of contract, breach of any law, in equity, or under any indemnity, and
- c) Vision will not be responsible for failure or delay in Delivery, pick up, installation or removal and will have no liability to Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

10. Liability and Indemnity

10.1 Hirer is liable for all costs, expenses, damages or loss (including consequential loss) whether caused by Hirer or any other third party, arising directly or indirectly out of the Use of the Equipment.

10.2 To the maximum extent permitted by law, the maximum amount recoverable by Hirer from Vision under or in connection with this Agreement is limited to the hire fees paid by Hirer to Vision under this Agreement.

10.3 Hirer agrees to indemnify and keep indemnified Vision and Vision's employees, agents and contractors from all costs, expenses, damages, suits, actions, claims and demands which they may suffer or incur arising either directly or indirectly out of the Use of the Equipment.

10.4 Hirer must not do or allow to be done any act matter or thing which may invalidate or prejudice any:

- a) insurance policy effected by Vision,
- b) Vision defence or prosecution of any claim, or
- c) right Vision may have against any person.

11. Title and Security

11.1 Title to the Equipment remains with Vision at all times, but subject to clause 11.2. Hirer must not grant or allow to subsist any security interest or encumbrance over the Equipment or allow Vision's interest and/or title (or if Vision is not the owner, the title of the owner) to be adversely affected in any way.

11.2 Where Vision is not the owner of the Equipment:

- a) Vision warrants that it has authority of the owner to hire the Equipment to Hirer pursuant to this Agreement;
- b) title to the Equipment remains with the owner at all times and Hirer shall have no ownership interest in the Equipment at any time;

c) the Hirer agrees that Vision may be required to compensate or otherwise indemnify the owner of the Equipment for any loss or damage to the Equipment or loss of rental or other income in respect thereof caused as a result of the breach by Hirer of its obligations under this Agreement, and the amount of such indemnity or compensation shall be deemed for all purposes of this Agreement to be costs and losses suffered by Vision for which Hirer is liable to compensate pursuant to the provisions of this Agreement.

11.3 Hirer must not make any representation or do any thing that may tend to induce any person to believe the Equipment is not the property of Vision (or, as applicable, any supplier of the Equipment to Vision). If possession of the Equipment is taken by or given to any third party for any reason, Hirer authorises Vision to take any action it deems necessary to protect its rights in the Equipment, at the cost of Hirer.

11.4 If Vision determines that this Agreement (or a transaction in connection with it) is or contains, or might constitute, a security interest for the purposes of the Personal Property Securities Act 1999 ("PPSA"), Hirer agrees at its own cost and upon request to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Vision considers necessary for the purposes of:

- a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- b) enabling Vision to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Vision; and
- c) enabling Vision to exercise rights in connection with the security interest, and to the extent Part 9 of the PPSA applies, the Hirer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.

11.5 The Hirer waives the right to receive a copy of the verification statement under section 148 of the PPSA confirming registration of a financing statement or a financing change statement relating to Vision's interest in the Equipment.

12. Location and Use of Equipment

12.1 Hirer must expressly inform Vision of the location of the Equipment during the Rental Period.

12.2 Hirer must not:

- a) part with possession of the Equipment;
- b) allow any other person to use the Equipment; or
- c) permit removal of the Equipment from the location at which Hirer represented it would be located; without the prior written consent of Vision.

12.3 Hirer must store the Equipment in a safe place and do all other things necessary to ensure the continued safety and preservation of the Equipment.

13. Collection, Storage and Use of Information

13.1 Hirer authorises Vision to collect, store, use and disclose information about Hirer for the purposes related to the provision of hire services (including whether to allow credit on Hirer's account), reporting information to any credit agency, marketing Vision's goods

and services, and enforcing any rights under this Agreement.

- 13.2 Hirer expressly consents to receiving commercial electronic messages from Vision and its agents for the purposes of the Unsolicited Electronic Messages Act 2007. Hirer may withdraw its consent at any time by notifying Vision in writing.
- 13.3 Where personal information is collected, stored or used by Vision, it will be dealt with in accordance with the Privacy Act 1993. In particular, any individual may access personal information held about him or her (subject to the permissible limitations contained in the Privacy Act 1993) and may request correction of that personal information. Further information about the handling of personal information including requests for access to personal information may be obtained from Vision's Privacy Officer.
- 13.4 Vision will comply with the Privacy Act 1993 and the Information Privacy Principles. A copy of Vision's privacy statement can be obtained by visiting www.visioni.co.nz.

14. Hirer's Warranties

- 14.1 Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:
- a) have Hirer's authority to contract with Vision on Hirer's behalf; and
 - b) have been authorised by Hirer to bind Hirer to hire the Equipment under this Agreement,
- and agrees to indemnify Vision against all losses, costs and claims incurred by Vision if this is not the case.
- 14.2 If there is any variation to the legal structure or management of Hirer, including (but not limited to) change in directors, senior management or trustee, or change in partnership or conversion to or from a company or to or from a trust, Hirer must notify Vision in writing within 7 days providing details of that change.
- 14.3 Hirer may not assign, or grant a security interest over, in whole or in part this Agreement or any benefit under this Agreement without Vision's prior written consent.

15. Changes to Terms and Conditions

- 15.1 Vision may amend these Terms and Conditions at any time by publishing the amendments on its website www.visioni.co.nz or otherwise notifying Hirer in writing. Such amended Terms and Conditions will govern each subsequent hire of equipment by Vision to Hirer.

16. General

- 16.1 Any failure of Vision to insist upon strict performance by Hirer of the conditions and terms of this Agreement will not be construed as a waiver of Vision's right to demand strict compliance.
- 16.2 Vision may exercise its rights under this Agreement personally or through its agents.
- 16.3 Vision may assign the Agreement to any of its related bodies corporate by notifying the Hirer of such assignment.

17. Acknowledgement:

- 17.1 I acknowledge that I have read and agree to the above Vision Terms & Conditions

18. Special conditions:

- 18.1 If the Hirer signs the collaboration terms set out in Annexure A, the terms of Annexure A will apply and, to the extent of any inconsistency, will prevail over the Terms and Conditions.

Signed by **Vision** by its authorised representative:

Signature of authorised representative

Name of authorised representative

Date

Signed by **Hirer** by its authorised representative:

Signature of authorised representative

Name of authorised representative

Date