

VPS TERMS & CONDITIONS OF HIRE

Capitalised terms have the meaning in clause 28, or as otherwise defined below.

1. APPLICATION OF THESE TERMS & CONDITIONS

- (a) These terms and conditions:
- apply to all Equipment that is hired from VPS (or any VPS Group Company named in a relevant invoice or contract) to the entity named in the invoice or the contract as the Hirer; and
 - are deemed to include the relevant VPS account application form (if applicable), the details appearing on a Purchase Order and Schedule of Fees and any other terms and conditions governing the use of the Portal (together the “**Terms and Conditions**”).
- (b) VPS is entering into these Terms and Conditions on its own behalf, or as agent for a VPS Group Company (as principal) where a VPS Group Company is named on the relevant invoice or contract as the party providing the Equipment or relevant services to the Hirer. Where VPS acts as agent, each reference in these Terms and Conditions to VPS is to the VPS Group Company hiring the Equipment or supplying the services (as applicable) and where there is more than one relevant VPS Group Company, to each of them severally.

2. INCONSISTENCIES

All hires of Equipment made to Hirers by VPS and associated services 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) the Terms and Conditions in this document;
- (c) the Portal terms and conditions; and
- (d) the Purchase Order and Schedule of Fees.

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 or deducted (as relevant) from the Equipment held by the Hirer and the Quantity on Hire when:
- (1) Equipment is Issued to the Hirer;
 - (2) Equipment is De-hired by the Hirer;
 - (3) there is an approved electronic or manual transfer of the hire of Equipment from a Sending Party to a Receiving Party in accordance with clause 3(d); or
 - (4) there is any other form of adjustment under the Terms and Conditions.

An item of Equipment will not be recorded as De-hired until it is returned to VPS or charges have been paid for Destroyed Equipment or Lost Equipment under clause 6.

- (d) A Sending Party must establish that the transfer of the hire of any Equipment is accepted by the Receiving Party. All transfers must occur electronically via the Portal, unless otherwise agreed by VPS (including by use of an

approved VPS transfer document and/or manual docket). VPS may refuse to approve a transfer in its sole discretion, including where the Receiving Party does not have an active account with VPS. 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 through the process in clause 3(d); 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 and Conditions. 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 acknowledges and agrees that:
- (1) 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) the Equipment is Issued or transferred to the Hirer for one use only and the Hirer must not Re-Use any Equipment, unless VPS gives its prior written consent; and
 - (3) VPS will Issue Equipment in minimum order quantities, or such other quantities, as VPS determines from time to time.
- (g) The Hirer must return all Equipment to VPS in good condition (subject to fair wear and tear). All Foldable Containers must be returned in a Folded State.

4. EQUIPMENT

- (a) The Hirer acknowledges that the Equipment Issued by VPS will (given the nature of the hiring arrangement) mostly be second-hand, used Equipment. The Hirer acknowledges 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 before using the Equipment.
- (b) The Hirer acknowledges that:
- (1) the Equipment or the materials used for its manufacture, or the Track & Trace Solution used with the Equipment, may be supplied by third parties;
 - (2) those third parties may reserve the right to alter the design or specifications of Equipment or materials supplied to VPS, or the Track & Trace Solution; and
 - (3) the Hirer agrees to such variations being made during the course of the hire arrangement, except to the extent such variations will have a material adverse impact on the Hirer's ability to use the Equipment or Track & Trace Solution. Any variations which will have a material adverse impact on the Hirer's ability to use the Equipment or Track & Trace solution will be notified to the Hirer in advance.

5. FEES & CHARGES

- (a) The Hirer must pay:
- (1) the Fees in respect of each item of Equipment and any service supplied by VPS (including as specified in any Fee Schedule and as agreed by the Hirer and VPS from time to time);
 - (2) any applicable stamp duty, GST or other duties; and
 - (3) any other amounts owing under these Terms and Conditions,
- without deduction or set-off, to VPS within 7 days (or such other period agreed in writing) of the date of VPS's invoice to the Hirer.
- (b) If the Hirer is regularly late paying invoices (as reasonably determined by VPS) or does not pay an invoice more than 5 Business Days after VPS issues a late payment notice, VPS may charge Default Interest on the overdue amounts, until payment of the overdue amounts is received in full. The Hirer must pay all costs and expenses (including legal costs on a solicitor and own client basis) which may be reasonably incurred by VPS in the recovery or attempted recovery of the overdue amounts.
- (c) Each invoice issued to the Hirer will, unless otherwise agreed, set out;
- (1) the type of Equipment hired to the Hirer and the Quantity on Hire on a mass balance basis; and
 - (2) the total Fees 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) resulting from incorrect entries in any previous invoices; or
 - (2) 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 not less than 30 days' written notice of VPS's intention to amend any of the Fees including introducing additional charges or fees.
- If the Hirer does not accept the amended Fees, the Hirer must, within the 30 day notice period:
- (1) notify VPS in writing to close the Hirer's account; and
 - (2) return all Equipment and pay all amounts owing.
- If the Hirer does not respond to the notice within the 30 day notice period, the Hirer is deemed to have accepted the amended Fees.
- (h) VPS may amend these Terms and Conditions from time to time by publishing them on the Portal. The amended Terms and Conditions will apply to the Hirer's next hire of Equipment following a period of 30 days from publication of the amended Terms and Conditions. VPS will also use reasonable endeavours to give Hirers 30 days notice (by email) that the

Terms and Conditions have been updated. If the Hirer does not agree with the amended Terms and Conditions, the Hirer may terminate its agreement with VPS for hire of the Equipment by notifying VPS in writing within the 30 day notice period. The Hirer's continued hire of Equipment and/or use of the Portal after this 30 day period is deemed acceptance of any amended Terms and Conditions.

Notwithstanding the above, nothing prevents VPS from making urgent changes to the Terms and Conditions that are required by law, or reasonably necessary to prevent fraud or misuse of the Equipment.

6. OWNERSHIP, DAMAGE 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 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 (or its relevant third party suppliers) remains the owner of the Equipment at all times, and no title to the Equipment at any time passes to the Hirer. 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.
- (c) If:
 - (1) Equipment on hire is damaged ("**Damaged Equipment**"), the Hirer must immediately notify VPS and return the Damaged Equipment to VPS. The Hirer must pay VPS an amount equal to a reasonable charge for repairing the Damaged Equipment. To avoid doubt, this does not apply to any fair wear and tear caused to Equipment (as determined by VPS acting reasonably) or any defects in Equipment supplied by VPS.
 - Where VPS (acting reasonably) considers that Damaged Equipment has been contaminated or otherwise rendered unusable, or damaged beyond reasonable repair, the Damaged Equipment will be treated as Destroyed Equipment and clause 6(c)(2) below will apply;
 - (2) Equipment on hire is destroyed ("**Destroyed Equipment**"), the Hirer must immediately notify VPS of the Destroyed Equipment and 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 in respect of Destroyed Equipment until payment as required by this clause has been made;
 - (3) Equipment on Hire is lost ("**Lost Equipment**") the Hirer must immediately notify VPS of the Lost Equipment and pay VPS the current value of the Lost Equipment, as reasonably determined by VPS. The Hirer remains liable to VPS for Fees in respect of Lost Equipment until payment required by this clause has been made;
 - (4) a Hirer finds the Lost Equipment following the payment of charges due under clause 6(c)(3), the Hirer must immediately notify VPS in writing and return the Lost Equipment to VPS. If VPS retakes possession of Equipment for which VPS considers that the Hirer has paid Destroyed Equipment or Lost Equipment charges then,

provided it is not damaged and a significant period of time has not elapsed whereby VPS considers the Equipment to be obsolete, VPS will refund to the Hirer the amount of any such charges, after deducting any costs of recovery or retaking possession and an amount equal to the amount of Fees 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;

- (5) the Equipment is on hire for a period greater than 3 months (i.e. if Issued Equipment is not De-hired within 3 months), VPS may, in its sole discretion, deem the Equipment as Lost Equipment and the Hirer will be required to pay VPS the amount determined in accordance with clause 6(c)(3).
- (d) If the Hirer is in breach of these Terms and Conditions (including any failure to pay Fees by the due date), or VPS reasonably believes there is any risk to the safety or security of the Equipment due to the Hirer's acts or omissions or that the Hirer is subject to an Insolvency Event: (i) 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, (ii) the Hirer gives VPS an irrevocable licence to enter property occupied by the Hirer at any time without committing trespass and to take any steps VPS considers reasonably necessary or appropriate to obtain possession of Equipment; and (iii) the Hirer must pay VPS's actual costs of obtaining possession of Equipment and must indemnify VPS from and against all Loss reasonably suffered and or incurred by VPS as a result of exercising its rights under this clause. VPS will update the balance of Equipment on the Hirer's account after Equipment is so recovered.
- (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 substances, 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(c) will 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).
- (g) Where the Equipment is a device or gateway used to provide the Track & Trace Solution, Hirer acknowledges that it must use the Equipment in accordance with the manufacturer's manuals and specifications, and in accordance with any other terms and conditions in relation to use of the device or gateway (including the User Licence in Attachment A).

7. NO PASSING OF PROPERTY

- (a) VPS's rights under this clause secure VPS's right to receive the Fees 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 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.
- (d) The Hirer indemnifies VPS from and against all Loss suffered and or incurred by VPS as a result of exercising its rights under this clause 7.
- (e) If there is any inconsistency between the VPS's rights under this clause and its rights under Chapter 4 of the PPSA, this clause 7 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; subsection 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. LIABILITY

- (a) To the extent permitted by law, VPS's liability to the Hirer (whether arising in contract, negligence or otherwise) is limited to (at VPS's option):
 - (1) replacing the relevant Equipment or resupplying the relevant services; or
 - (2) refunding the amount of the relevant Fees, and VPS is not liable for any loss of revenue, profits or production, or any indirect or consequential loss.
- (b) To the extent permitted by law, 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 and Conditions;
 - (2) any wilful conduct or negligence by the Hirer;
 - (3) any action or activity by the Hirer which infringes the Intellectual Property Rights of VPS or a third party; or
 - (4) any use of the Portal or Transaction Information which is outside the limited licences granted in these Terms and Conditions, or which is otherwise unlawful.

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

- (c) Each party 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 by the other; and
 - (2) VPS liability (if any) under these Terms and Conditions falls solely on VPS (or the relevant VPS Group Company named on the relevant invoice or contract as the party providing the Equipment or relevant services to the Hirer) and any claim by the Hirer under these Terms and Conditions must be solely against VPS or the relevant VPS Group Company.
- (d) To the extent permitted by law, VPS excludes any warranty implied by law. To avoid doubt, this does not apply to any consumer guarantees under the Australian Consumer Law.

11. 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.

12. 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 Force Majeure Event. During the continuance of the Force Majeure Event the obligations of the affected party, to the extent that they are affected by the Force Majeure Event, are suspended and resume as soon as possible after the Force Majeure Event has ceased to have effect.
- (c) If a Force Majeure Event continues for a period of 30 days, either party may terminate the hiring arrangement with respect to the affected Equipment in writing.

13. HANDLING INSTRUCTIONS

All items of Equipment must be used and operated by the Hirer in a safe and proper manner, to store and transport Produce (or other goods agreed by VPS in writing) only, and strictly in accordance with any handling instructions or guidelines and manufacturer 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.

14. TERMINATION

- (a) A party may immediately terminate any or all Purchase Orders and the Hirer's VPS account if the other party: (1) breaches any of these Terms and Conditions, and does not remedy this breach within 14 days of being notified in writing of the breach; or (2) commits any material breach of this of these Terms and Conditions which is not capable of being remedied. Termination will not affect any rights accrued prior to termination.
- (b) Either party may at any time give the other 30 days' written notice terminating all Purchase Orders and the Hirer's VPS account.
- (c) On receipt of a notice under 14(a) or (b), the Hirer must deliver to VPS (at no cost to VPS) within 7 days of termination, or by any later date specified in the notice, all Equipment held by the Hirer.

- (d) VPS may treat any Equipment not so delivered as Lost Equipment for the purposes of clause 6(c)(3), 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.
- (e) The Hirer's obligations under this clause survive termination of the hire of Equipment.

15. INTELLECTUAL PROPERTY

VPS (or its third party licensors) owns all Intellectual Property Rights in:

- (a) the Equipment;
 - (b) the Portal;
 - (c) the Track & Trace Solution;
 - (d) all aspects of the hiring arrangement supplied by VPS (including VPS's processes, methods and technical information);
 - (e) the Transaction Information; and
 - (f) any other information communicated to the Hirer by VPS;
- including all updates, improvements or modifications to any of the above made during the hire period. Nothing in these Terms and Conditions will transfer or assign any of those Intellectual Property Rights to the Hirer.

The Hirer acknowledges that all of the above Intellectual Property Rights of VPS (and its third party licensors) must be treated as absolutely confidential by the Hirer who must not use them for any unauthorised purpose nor transfer or divulge them in any manner to anyone without the prior written consent of VPS.

16. LICENCE TO USE PORTAL

- (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, or accessing tracking data related to the Track & Trace Solution; and
 - (2) for normal use of the Transaction Information for the internal management of the Equipment by the Hirer, in accordance with all relevant laws.
- (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 back-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 and Conditions 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 16(b); or
 - (2) to Communicate the Transaction Information (or any substantial part of it) to the public except to:
 - (i) VPS;

- (ii) the Hirer's legal or accounting advisors or auditors;
 - (iii) the Hirer's related entities; or
 - (iv) 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.
- (d) The licences granted under this clause 16 continue while the Hirer has an active account with VPS for the hire of Equipment.

17. TRACK & TRACE SOLUTION

- (a) To the extent the Equipment supplied to the Hirer consists of devices and / or gateways used for the purposes of the Track & Trace Solution, the additional terms in Attachment A apply (**Track & Trace User Licence**).
- (b) If any terms of the Track & Trace User Licence are inconsistent with these Terms and Conditions, the Track & Trace User Licence will prevail to the extent of the inconsistency.

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: (1) the parties must be registered persons within the meaning of the GST Law; (2) 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 (3) 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 De-hired or transferred to another Hirer in accordance with clause 3(c)(3) and (d). 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

All pallets used to deliver Equipment are held at the Hirer's risk on delivery, and the Hirer indemnifies VPS for all costs incurred by VPS in relation to pallets which are lost, damaged or otherwise not returned in good condition. The Hirer must comply with all relevant third party pooling arrangements (e.g. CHEP) in relation to the pallets.

23. NOTICES

A notice to be given or an invoice to be issued under these Terms and Conditions may be given or issued by:

- (a) leaving it at or posting it to the address last notified by a party 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 to the email address last notified by a party in writing 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) making it available via the Portal, and is taken as given when transmitted to the other party.

24. ASSIGNMENT AND NOVATION

The Hirer must not assign or novate 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 VPS Group Company may set-off any amounts owed by it to the Hirer under these Terms and Conditions against amounts owed by a VPS Group Company to the Hirer on any account whatsoever.
- (b) A party does not waive its rights under or in relation to these Terms and Conditions unless expressly agreed in writing.
- (c) 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.
- (d) These Terms and Conditions (including those appearing on the VPS account application form or the Portal terms) 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 or as per clause 5(h).

- (e) Any dispute arising out of the Terms and Conditions is governed by the laws of the State or Territory of Australia where the Purchase 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 these Terms and Conditions;

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

“Default Interest” means the 90 day Bank Bill Swap Bid Rate (as quoted on Reuters page BBSY at 10.45am) plus 2% commencing from the due date of payment (with interest accruing daily until all monies owing are paid in full);

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

“De-hire” means the return of Equipment by the Hirer to VPS at a Depot authorised to accept that Equipment;

“Electronic Rights Management Information” has the same meaning as that term in the Copyright Act 1968 (Cth);

“Equipment” means items of property lent or hired out by VPS from time to time, including crates, bins, and any hardware in relation to the Track & Trace Solution;

“Fees” means the fees set out in the relevant Fee Schedule or as otherwise agreed by the parties from time to time, as well as all other charges calculated in accordance with these Terms and Conditions;

“Fee Schedule” means a schedule supplied to the Hirer by VPS before hire of Equipment, 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 Issued by VPS or transferred from another Hirer, and its legal personal representatives, successors, permitted assigns, agents and any other designated representative;

“Insolvency Event” an arrangement, compromise, winding up, dissolution, official management, appointment of administrator, liquidator or controller, assignment for the benefit of a creditor, scheme of arrangement with creditors, insolvency, bankruptcy or similar procedure;

“Intellectual Property Rights” means patents, patent rights, copyrights, rights in circuit layouts, registered designs, design rights, registered and unregistered trade marks, trade names, domain names, know how and any right to have confidential information kept confidential and all other intellectual property as

defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967;

“Issue” means VPS’s electronic allocation of Equipment to the Hirer (as confirmed via the Portal), after which the Equipment may be collected and used by the Hirer;

“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;

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

“Portal” means the online portal operated by VPS which enables the Hirer to place Purchase Orders and view Transaction Information and other information provided by VPS from time to time, and includes any online portal used to access data relating to the Track & Trace Solution;

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

“Privacy Law” means the Privacy Act 1988, including (without limitation) the Australian Privacy Principles (APPs) and all other relevant privacy laws;

“Produce” means fresh fruit, fresh vegetables, other fresh foodstuffs, protein and other perishable goods;

“Purchase Order” means any request by a Hirer, submitted in accordance with these Terms and Conditions, for the hire of Equipment;

“Quantity on Hire” means the quantity of Equipment lent or hired by VPS to the Hirer;

“Receiving Party” means a party that desires to become the Hirer of the Equipment in place of the Sending Party;

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

“Sending Party” means an existing Hirer of the Equipment that desires to transfer their hire of the Equipment to a Receiving Party;

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

“Terms and Conditions” has the meaning in clause 1(a);

“Track & Trace Solution” means devices, gateways and a cloud based platform supplied by VPS which allows the tracking of assets, and associated support services;

“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 includes all data that is used, stored, collected, transmitted or processed in relation to the Track & Trace Solution, regardless of the form that data or information takes;

“VPS” means Viscount Pooling Systems Pty Ltd (ACN 618 166 742) and where applicable the VPS Group Company named in the invoice and/or contract in relation to the supply of Equipment or services pursuant to these Terms and Conditions from time to time; and

“VPS Group Company” means the subsidiaries (as defined in the Corporations Act 2001 (Cth)) of Viscount Plastics Pty Ltd (ACN 005 647 389).

Attachment A

USER LICENCE (TRACK & TRACE SOLUTION)

This User Licence applies to your use of the Track & Trace Solution (in addition to the Terms and Conditions for hire of the Equipment). References to “you” and “your” means the Hirer under the Terms and Conditions, and “we”, “our” or “us” means VPS. Capitalised terms have the meaning in clause 4 below, or as otherwise defined in the Terms and Conditions.

1. Licence

- 1.1 You are granted a limited, non-exclusive and non-transferable licence to access and use the Track & Trace Solution for the Term, solely to track Equipment you hire from us under the Terms and Conditions. You must use the Track & Trace Solution in accordance with all relevant laws.
- 1.2 In your use of the Track & Trace Solution, you must not (and not permit anyone else to):
- (a) use the Track & Trace Solution for any unlawful or unauthorised purpose;
 - (b) use the Track & Trace Solution to send unsolicited messages or to transmit any harmful or malicious code, or to publish information that is obscene, inappropriate, defamatory, disparaging, indecent, offensive, pornographic, threatening, abusive, liable to incite racial or other hatred, or in any way discriminatory;
 - (c) violate any of our (or our third party's) Intellectual Property Rights in the Track & Trace Solution, including by reverse engineering, reverse assembling or decompiling the whole or any part of our proprietary hardware or software products;
 - (d) do anything that compromises the stability or security of the Track & Trace Solution, or interferes with any other user;
 - (e) resell, rent, lease or otherwise distribute the Track & Trace Solution.

2. Damage caused by you

- 2.1 You are responsible for damage to the Hardware caused by any of the following: (a) any corrosion or exposure to extreme temperature outside operating temperature in specifications for the Hardware (i.e., Operating temperature: -18°C to +55°C); (b) abuse, mishandling, accident or failure to follow operating instructions; (c) use where voltage exceeds the provisioned specifications; or (d) use with other accessories that do not conform to recommended specifications.
- 2.2 You must not permit the Hardware to be serviced or modified by a third party (other than the manufacturer of the Hardware as arranged by us).

3. Limitations & Dependencies

- 3.1 You acknowledge that the Track & Trace Solution operates by using: (a) the global telecommunications system which receives global positioning system (GPS) satellite signals, location services and communications with the Track & Trace Solution's software platform through a wireless communication networks; and (b) RF signal and commercial mobile wireless services purchased from one or more third party providers (underlying wireless carrier) (each of the above together referred to as “Third Party Connectivity”). As a result of the inherent limitations of the Third Party Connectivity, not all services are available everywhere, particularly in remote areas like the Australian outback, or enclosed areas like underground parking garages), and neither can it be guaranteed to work at all times. The service has the following limitations:
- (a) The Track & Trace Solution is dependent on the availability of Third Party Connectivity;
 - (b) The Track & Trace Solution does not have the ability to make or receive voice calls and may only communicate

electronic data as machine readable signals to the Track & Trace Solution's software platform;

- (c) Hardware must be connected to a working electrical system, or have an adequately charged battery for the Track & Trace Solution and services to operate;
- (d) Hardware must be maintained and in good working order as would be reasonably expected from a user of the Hardware;
- (e) The quality of the Track & Trace Solution may be impaired by hills, tall buildings, tunnels, weather, customer stacking and storage location, damage to the Device or wireless network congestion;
- (f) The Track & Trace Solution may not be available if GPS satellite signals are not working or the signals are obstructed impairing the Track & Trace Solutions ability to determine the Device's precise location;
- (g) The Track & Trace Solution will not work unless the Device is in a place where RF signal/ Readers have been deployed and where an agreement has been established with an underlying wireless carrier with full service in that area, network capacity and reception when the Services are needed;
- (h) The maps and global information service (GIS) information the Track & Trace Solution provides is based on the most current map information available to us, but may be inaccurate when complete if the third party data on which it is based is inaccurate (e.g., routing data may not include information about one-way roads, turn restrictions, construction projects, seasonal roads and the like);
- (i) The Track & Trace Solution can fail or be delayed by acts of nature, forces or causes beyond our reasonable control (e.g., a Force Majeure Event), including but not limited to weather conditions and the result thereof, public utility failure, acts of war, government actions, terrorism, civil disturbances, or internet, telecommunications or other public carrier system failures; and
- (j) If the underlying wireless carrier terminates or restricts digital service for reasons not due to our fault, the Track & Trace Solution will not be available.

3.2 To avoid doubt, any tracking data made available to you by the Track & Trace Solution does not include raw data on the Devices.

4. Defined Terms

- “**Device**” means the device(s) we supply to you as part of the Track & Trace Solution;
- “**Gateway**” means the gateway that supplied to you as part of the Track & Trace Solution;
- “**Hardware**” means all hardware supplied to you as part of the Track & Trace Solution, including the Devices and Gateways; and
- “**Term**” means the period of your hire of Equipment from us (in relation to which you use the Track & Trace Solution) under the Terms and Conditions.