

LEASE
New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office. Duties Assessment No.
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(A) TORRENS TITLE

Property leased Part 2/1077295 being that part of 67 Bridge Street, Lithgow shown framed in blue on the plan annexed

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any. Email: _____ Reference: _____	CODE L
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(C) LESSOR

Lithgow City Council (ABN 59 986 092 492)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

Kenwood Industries Pty Ltd (ACN 601 761 184)
TENANCY:

(G) 1. TERM Five (5) years

2. COMMENCING DATE

3. TERMINATING DATE

4. With an **OPTION TO RENEW** for a period of N.A.
set out in clause N.A. of N.A.

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A and B hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The **RENT** is set out in clause No. 5 of Annexure A

DATE

(H)

I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence. [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Authorised officer's name: Craig Butler/General Manager
Authority of officer: s.377 Local Government Act 1993
Signing on behalf of: Lithgow City Council

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Kenwood Industries Pty Ltd (ACN 601 761 184)
Authority: section 127 Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held: Director

Name of authorised person:
Office held: Director

(I) **STATUTORY DECLARATION***

I solemnly and sincerely declare that—

- 1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____ in the presence of _____ of _____,

- Justice of the Peace (J.P. Number: _____) Practising Solicitor
- Other qualified witness [specify] _____,

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

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Annexure "A" to the Lease between Lithgow City Council (ABN 59 986 092 492) (Lessor) and Kenwood Industries Pty Ltd (ACN 601 761 184) (Lessee) dated the _____ of _____ 2022

REFERENCE SCHEDULE

1	Premises	The land being part of Lot 2 in DP1077295 and comprising an area of 210 m ² , located behind 69 Bridge Street, Lithgow and shown framed in blue on the plan annexed to this lease.
2	Commencing Date	TBA
3	Term	Five (5) years
4	Expiry Date	TBA
5	Permitted Use	Outdoor/AI fresco area to be used in conjunction with the operation of the Tin Shed Cafe
6	Rent	On commencement the rent is \$3,528 per annum plus GST equating to \$294 per month plus GST
7	Rent Review Dates	Each one year anniversary of the Commencing Date
8	Rent Review Method	3% increase on each Rent Review Date
9	Outgoings	15.41% of Council rates for Lot 2 in DP1077295 excluding any charges relating to water, sewer or waste services (the percentage is the proportion that the Premises (210m ² bears to the whole of Lot 2 in DP1077295 (1,363m ²))
10	Address for Service of Notices	<p>Lessee: Kenwood Industries Pty Ltd (ACN 601 761 184) c/- Tin Shed Café 69 Bridge Street Lithgow NSW 2790 Phone: 0405 509 112 Email: kenausssel@bigpond.com</p> <p>Lessor: Lithgow City Council (ABN 59 986 092 492) 180 Mort Street Lithgow NSW 2790 Phone: (02) 6354 9999 Email: council@lithgow.nsw.gov.au</p>

The Lessor and the Lessee hereby covenant and agree as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Lease unless the contrary intention appears:

Authority includes any government or governmental, semi-governmental, administration, fiscal or financial body, department, commission, council, authority, tribunal, agency or entity.

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

Claim means any action, suit, claim, demand, proceedings, loss, damage, compensation, cost, legal cost, charge or expense.

Council means Lithgow City Council in its capacity as a statutory authority under the Local Government Act 1993.

Environment has the same meaning given to that term in the *Protection of the Environment Operations Act 1997*;

Improvements mean any structure or work of a permanent nature attached to the land;

Law includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

Party means a party to this Lease;

Tenant Fixtures means any plant equipment fittings or Improvements in the nature of fixtures brought onto the Premises by, on behalf of, or at the request of the Lessee;

this Lease means this Lease Agreement including the Reference Schedule and Annexure.

1.2 **Interpretation**

Unless the contrary intention appears or the context requires otherwise, the following rules of interpretation apply.

- (a) **Plurals** - Words importing the singular include the plural and vice versa.
- (b) **Genders** - Words importing any gender include the other genders.
- (c) **Persons** - A reference to a person includes:
 - (i) an individual, a firm, unincorporated association, corporation and a government or statutory body or authority; and
 - (ii) the legal personal representatives, successors and assigns of that person.
- (d) **Headings** - Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in construing this Lease.
- (e) **Clauses and Sub-clauses**
 - (i) A reference to a clause includes all sub-clauses, paragraphs, subparagraphs and other components which form part of the clause referred to.
 - (ii) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.
- (f) **Time** - A reference to time is a reference to local time in Sydney.
- (g) **Money** - A reference to \$ or "dollars" is a reference to the lawful currency of Australia.
- (h) **Defined Terms** - If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.
- (i) **Writing** - A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

- (j) **Contra Proferentem** - No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Lease or any part of it.
- (k) **Statutes** - A reference to a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.
- (l) **Lease** - A reference to this Lease shall include any variation of this Lease.
- (m) **Further assurances** - Each Party must do everything necessary to give full effect to this Lease.
- (n) **Relationship of Lessor and Lessee** - Nothing contained or implied in this Lease will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee.

2. **GRANT OF LEASE**

2.1 The Lessor warrants that:

- (a) the Premises is classified "community" land within the meaning of Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*; and
- (b) the Lessor has the power to grant a lease of the Premises under section 45(2) of the *Local Government Act 1993*.

2.2 The Lessee acknowledges that:

- (a) the Lessor enters into this Lease solely in its capacity as owner of the Premises, and this Lease does not, and is not to be construed as:
 - (i) a fetter on the exercise of Council's statutory powers or obligations; or
 - (ii) conferring on the Lessee any right, licence, approval, authorisation or consent required for the Permitted Use or the operation of the Lessee's business at the Premises.
- (b) it must obtain and maintain throughout the term of this Lease any licence, approval, authorisation or consent required for the Permitted Use or its operations.

2.3 The Lessor grants to the Lessee, and the Lessee accepts, a lease of the Premises on the terms and conditions set out in this Lease.

3. LESSEE'S WARRANTIES

3.1 The Lessee warrants that it:

- (a) has relied only on its own inquiries about this Lease; and
- (b) has not relied on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf.

4. TERM AND PERMITTED USE

4.1 Term of Lease

The Lessor grants to the Lessee a lease of the Premises for the Term specified in Item 3 of the Reference Schedule. The Term shall commence on the Commencing Date specified in Item 2 of the Reference Schedule and expire on the Expiry Date specified in Item 4 of the Reference Schedule.

4.2 Permitted Use

The Lessee will not use the Premises or allow the Premises to be used for any purpose other than the Permitted Use specified in Item 5 of the Reference Schedule.

5. RENT, OUTGOINGS AND OTHER CHARGES

5.1 Payment of Rent

From the Commencing Date the Lessee must pay the Rent stated in Item 6 of the Reference Schedule and as reviewed in accordance with Item 7 and 8 of the Reference Schedule, monthly in advance without any deduction or set-off.

5.2 Outgoings

The Lessee must pay the Outgoings specified in Item 9 of the Reference Schedule by the due date for payment shown in a tax invoice issued by the Lessor to the Lessee for Outgoings.

5.3 Lessee to pay other charges

The Lessee will pay all other fees, charges and impositions not referred to in clause 5 for which it may properly be liable and which are at any time during the Term payable in respect of the Premises or on account of the use and occupation of the Premises by the Lessee.

5.4 Lessee to pay cost of work

Whenever the Lessee is required under this Lease to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Lease otherwise provides be at the sole risk, cost and expense of the Lessee.

6. COSTS PAYABLE

Costs payable to Lessor

Except where a law limits costs being incurred by a Lessee being recovered from the Lessor, the Lessee will pay in full the Lessor's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Lessor in consequence of or in connection with or incidental to:

- (a) the preparation, completion, stamping (if any) and registration of this Lease;
- (b) any variation of this Lease made otherwise than at the request of the Lessor;
- (c) any application for the consent of the Lessor and the Minister if applicable under this Lease;
- (d) any and every failure to comply, breach or default by the Lessee under this Lease;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease;
- (f) the examination of plans, drawings and specifications of any Improvement erected or constructed or to be erected or constructed on the Premises by the Lessee and the inspection of it, in this case the costs to be mutually agreed;

- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Lessee of any provision of this Lease;
- (h) the Lessee requiring the Lessor to do any act, matter or thing under this Lease, unless otherwise provided for in this Lease, the Lessee will reimburse the Lessor for all reasonable costs and expenses incurred in complying with that requirement.

7. INTEREST ON OVERDUE MONEYS

The Lessee will pay interest to the Lessor on any moneys due and payable under the Lease or on any judgment in favour of the Lessor in an action arising from the Lease until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Lessor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest will accrue and be calculated daily.

8. MANNER OF PAYMENT OF RENT AND OTHER MONEYS

The Rent and other moneys payable in accordance with this Lease must be paid to the address or bank account shown on a tax invoice issued by the Lessor to the Lessee, or as otherwise notified to the Lessee.

9. GOODS AND SERVICES TAX

- (a) For the purposes of this Lease, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) All payments to be made or other consideration to be provided under this Lease are GST exclusive unless otherwise expressly stated. If any payment or consideration to be made or provided by the Lessee to the Lessor is for a taxable supply under the Lease on which the Lessor must pay GST and the Lessor gives the Lessee a tax invoice, the Lessee must pay to the Lessor an amount equal to the GST payable (the "GST Amount") by the Lessor for that taxable supply upon receipt of that tax invoice.
- (c) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by the Lessor as a result of default by the Lessor in complying with the GST Law.

10. ASSIGNMENT OR PARTING WITH POSSESSION, SUBLEASING, MORTGAGING ETC

10.1 Assignment

The Lessee may not assign this Lease or part with possession of the Premises without the consent of the Lessor. The Lessor will not unreasonably withhold consent if:

- (a) a proposal to assign this Lease is in conjunction with a sale of the business of the Tin Shed Café to a third party; and
- (b) the Permitted Use under this Lease will not change; and
- (c) the proposed transferee has financial resources and hospitality experience to at least the same level as the Lessee; and
- (d) the directors of the proposed transferee provide personal guarantees to the Lessor.

10.2 A request for the Lessor's consent to an assignment of this Lease must be made in writing and the Lessee must provide the Lessor with such information as the Lessor may reasonably require concerning the financial standing and business experience of the proposed transferee.

10.3 The Lessee is to pay the Lessor's reasonable legal and other costs relating to considering and giving consent, including any costs which the Lessor incurs in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed assignee or the person to whom possession is proposed to be transferred.

10.4 Sub-lease, mortgaging etc

The Lessee may not sub-lease, mortgage or charge this Lease or any estate or interest in the leased Premises.

11. TERMINATION OF LEASE

Subject to clause 12 this Lease terminates on the Expiry Date specified in Item 4 of the Reference Schedule.

12. TERMINATION OF LEASE ON DEFAULT

12.1 The Lessor may end the Lease in the manner set out in sub-clause 12.2 if:

- (a) the Rent or any part of it or any other moneys owing to the Lessor under the Lease is or are in arrears for one month, whether formally demanded or not;
- (b) the Lessee breaches an essential condition of this Lease or any rule or regulation made under this Lease;
- (c) defects notified under a provision of this Lease are not remedied within the time specified in the notice;
- (d) the Lessee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
- (e) the Lessee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (f) the Lessee is a company and is placed under official management under the corporations law or enters a composition or scheme of arrangement;
- (g) the Lessee or any person claiming through the Lessee conducts any business from the leased Premises after the Lessee has committed an act of bankruptcy.

12.2 If a provision of clause 12.1 applies,, the Lessor may end the Lease by:

- (a) notifying the Lessee in writing that it is ending the Lease; or
- (b) re-entering the Premises, with force if necessary, and ejecting the Lessee and all other persons from the Premises and repossessing them; or
- (c) doing both.

12.3 If the Lessor ends this Lease under this clause, the Lessee will not be released from liability for any prior breach of this Lease and other remedies available to the Lessor to recover arrears of Rent or for breach of this Lease will not be prejudiced.

12.4 If the Lessor ends this Lease under this clause, it may remove the Lessee's property and store it at the Lessee's expense without being liable to the Lessee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Lessor may sell or dispose of the property by auction or private sale. It may apply any

proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

- 12.5 If the Lessor ends this Lease under this clause, it may, in addition to any other rights and remedies that it might have, recover from the Lessee damages for the loss of the benefit of the rest of this Lease.

13. ACCEPTANCE OF RENT NOT WAIVER

Demand for, or acceptance of Rent or any other moneys due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture.

14. LESSEE TO YIELD UP

14.1 Vacate the Premises

The Lessee will forthwith upon the termination of this Lease peaceably vacate the Premises at the Lessee's expense and comply with clause 14.2.

14.2 Removal of unauthorised works and Tenant Fixtures

Upon termination of this lease the Lessee must at its cost:

- (a) remove the unauthorised pergola and timber deck structures from the Premises, in accordance with condition 10(b) of DA061/21; and
- (b) unless otherwise provided for in this Lease, remove the Tenant Fixtures and must remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Lessee (other than a notice displayed by the Lessor); and
- (c) unless otherwise provided for in this Lease, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Lessee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Tenant Fixtures to the reasonable satisfaction of the Lessor; and
- (d) leave the Premises in a clean and tidy condition.

15. LESSEE'S OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES

15.1 Development Approval DA061/21

- (a) The Lessee must comply with the conditions of development consent DA061/21, determined by the consent authority on 26 July 2021.
- (b) A failure to comply with a condition of consent will constitute an essential breach of this Lease under clause 12.1.

15.2 Additions and alterations

- (a) The Lessee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Lessor as owner of the Premises, and any development consent required under the *Environmental Planning & Assessment Act 1979*.
- (b) Any additions or alterations consented to by the Lessor shall be carried out at the Lessee's expense and in a workmanlike manner.

15.3 Maintenance of Premises

The Lessee will keep the Premises clean and tidy and in good order and condition.

15.4 Signage

The Lessee shall not construct attach or paint any sign upon or within the Premises without the written consent of the Lessor, unless such signage is related to safety or advertises the Lessee's business operated from the Premises, and any development consent required under the *Environmental Planning & Assessment Act 1979* or the *Local Government Act 1993* has been obtained.

15.5 Lessee to erect barricades etc.

Where the Premises or any part of the Premises become to the knowledge of the Lessee (or which ought reasonably to be in the knowledge of the Lessee) unsafe, hazardous or dangerous the Lessee will forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

15.6 Notification of accident

The Lessee will give to the Lessor prompt notice in writing of any serious accident to any person or damage to the Premises or serious defect at or to the Premises unless that defect or accident is capable of being and is promptly remedied by the Lessee.

15.7 Rodents and vermin

The Lessee will take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and will in the event of failing to do so if required by the Lessor but at the cost of the Lessee employ from time to time a duly certified pest exterminator approved by the Lessor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Lessee and any person acting on the Lessee's behalf will not use any substance or undertake any activity prohibited by any law.

15.8 Lessee not to commit nuisance etc

The Lessee shall not undertake any activity on the Premises or bring anything onto the Premises that is illegal, dangerous, offensive, hazardous, noxious, harmful to the environment, or that is or may become a nuisance or annoyance to the Lessor or to owners or occupiers of adjoining or neighbouring property.

16. REPAIR AND MAINTENANCE OF PREMISES

16.1 General requirement to repair

Without prejudice to any specific obligations contained in this Lease the Lessee will to the satisfaction of the Lessor at all times keep the Premises in good repair and properly maintained in all respects.

16.2 Breakages

The Lessee will immediately at the Lessee's expense make good any breakage defect or damage to the Premises or to any adjoining premises or to any facility or appurtenance of the Lessor occasioned by want of care, misuse or abuse on the part of the Lessee, the Lessee's agents, servants or invitees.

16.3 Lessor's right to enter inspect and repair

The Lessor and the Lessor's agents may at all reasonable times upon giving to the Lessee 48 hours' notice (except in the case of emergency when no notice shall be

required) and accompanied by the Lessee or an employee or agent of the Lessee enter upon the Premises and view the state of repair of the Premises and may serve upon the Lessee a notice in writing of any defect (the repair of which is the Lessee's obligation under this Lease to undertake) requiring the Lessee within two months to repair the same.

17. INDEMNITIES AND RELEASE

17.1 Indemnity for use of Premises

The Lessee indemnifies and keeps indemnified the Lessor from and against:

- (a) all Claims whatsoever to which the Lessor shall or may be or become liable for or in respect of the Lessee's occupation, operation and use of the Premises;
- (b) all Claims of whatsoever nature or kind and howsoever arising (and whether to any property or to any person resulting in the destruction or damage of any property or the death or injury of any person) at or upon the Premises or originating on the Premises, although occurring or sustained outside the Premises,

except to the extent that any such Claims arise from or are contributed to by the negligence or wilful act or omission on the part of the Lessor.

17.2 Indemnity continues after expiration of Lease

The obligations of the Lessee under this clause continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

17.3 Exclusion of Consequential Loss

Despite any other provision of this Lease, both Parties exclude, (and agree that they will have no rights against the other for) liability for consequential or indirect loss arising out of this Lease including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

17.4 Release of lessor from liability

- (a) The Lessee shall occupy, use and keep the Premises at the risk of the Lessee.

- (b) The Lessee releases to the full extent permitted by law the Lessor from all Claims resulting from any accident, damage or injury occurring on the Premises and the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Lessee or any agent or servant of the Lessee or of any member of the public whilst in or upon the Premises.
- (c) Sub-clause 17.4(a) and (b) do not apply to the extent that such Claims arise out of the negligent or wilful acts omissions or default of the Lessor.
- (b) The obligations of the Lessee under this clause shall continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for which the Lessee is responsible. Such obligation is to be governed by the Limitations Act 1969 or any legislation that replaces it.

17.5 No liability for failure of services

The Lessor will not be under any liability for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises or this Lease provided that such failure is not due to the negligent or wilful act or omission of the Lessor its servants or agents.

18. INSURANCE

18.1 Public liability cover

The Lessee must effect and maintain public risk insurance with a reputable and solvent insurer with respect to the Premises and the activities carried on at the Premises. Such policy must:

- (a) be for cover of at least \$20,000,000 in respect of liability arising out of any one single accident or event;
- (b) describe the situation of risk as “part Lot 2 in DP1077295 being part 67 Bridge Street, Lithgow”; and
- (c) include “Lithgow City Council” on the policy as the Lessor/an interested party.

18.2 Provisions re policies

- (a) The Lessee will produce to the Lessor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of currency in respect of the public risk insurance required under clause 18.1.
- (b) The Lessee will not at any time during the Term do any act or omit to do any act which may render void or voidable any policy of insurance. If the Lessee does any act or fails to do any act whereby the rate of premium on such insurance shall be liable to be increased, the Lessee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Lessee.

19. LESSOR'S WARRANTIES AND COVENANTS

19.1 Hazardous chemicals

The Lessor warrants that it has not received any notices pursuant to the *Contaminated Land Management Act 1997 (NSW)* in respect of the Premises.

19.2 Quiet enjoyment

The Lessor warrants that subject to:

- (a) the Lessor's rights under this Lease;
- (b) the Lessee complying with its obligations under this Lease;

the Lessee may hold and occupy the Premises without undue interference by the Lessor.

20. COMPLIANCE WITH LAW

- (a) The Lessee must not use the Premises for any use other than the Permitted Use.
- (b) The Lessee must at its own cost comply with all Laws, and with the requirements of any Authority that has jurisdiction relating to the Premises or their use.

21. DISPUTE RESOLUTION

Procedure

- (a) In the event that the Lessor and the Lessee are in dispute regarding any matter relating to or arising under this Lease or in respect of any approvals or consents to be granted by the Lessor (except those approvals or consents where the Lessor has an obligation to act reasonably) to the Lessee hereunder, then either the Lessor or the Lessee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notice, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Lease.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 21(d).
- (g) Notwithstanding the existence of a dispute being dealt with under this clause the Parties must, unless acting in accordance with an express provision of this Lease, continue to perform their obligations under this Lease.

22. NOTICES

22.1 Writing

Notices required by this Lease must be in writing and signed by that Party or a person authorised from time to time by that Party.

22.2 Methods of Service

Either party may serve a notice on the other by personal delivery, posting or emailing it to the relevant address specified in Item 10 of the Reference Schedule or such other address as notified by a Party to the other Party.

22.3 Provisions for Service

The following provisions apply in relation to service:

- (a) any notice personally delivered before 4pm on a Business Day is deemed to have been given on that day, and if delivered after 4pm on a Business Day is deemed to have been given on the next Business Day;
- (b) any notice sent by post must be sent by security post or certified mail, and is deemed to have been given on the third Business Day after the date of posting;
- (c) any notice sent by email before 4pm on a Business Day is deemed to have been given on the day, and if sent after 4pm on a Business Day is deemed to have been given on the next Business Day.

23. MISCELLANEOUS

23.1 Severability

Any provision of this Lease, which is prohibited or unenforceable in any jurisdiction, shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

23.2 Essential terms of lease

The Lessor and the Lessee agree that the clauses 4, 5, 6, 7, 9, 10, 15, 16, 18 and 20 are essential conditions of this Lease.

23.3 Sections of legislation not to apply

The covenants and powers implied in leases by sections 84 and 85 of the *Conveyancing Act 1919* do not apply to this Lease.

23.4 No waiver

- (a) No waiver by a Party of any breach of any covenant obligation or provision in this Lease either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied.
- (b) None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

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23.5 No merger

Unless indicated otherwise in this Lease, nothing in this lease merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Lease or under any other agreement.

23.6 Applicable law

This Lease shall be construed and interpreted in accordance with the law of New South Wales.

23.7 No holding out

The Lessee will not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Lessor nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor.

23.8 Whole agreement

The provisions contained in this Lease comprise the whole of the agreement between the Parties in respect of the Premises.

