

GOGETTA EQUIPMENT FUNDING PTY LTD
ACN 124 102 647

A division of
SILVER CHEF LIMITED



VENDOR REMARKETING AGREEMENT

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VENDOR REMARKETING AGREEMENT

BETWEEN: GoGetta Equipment Funding Pty Ltd ACN 124 102 647 of 14 Finchley Street, Milton in the State of Queensland (“GoGetta”)

and

The Party or Parties named in Schedule 1 (“Vendor”/s)

RECITALS:

- A. The *Vendor* distributes the *Goods* to *customers*.
- B. *GoGetta* is in the business of supplying finance and *rental assistance*.
- C. *GoGetta* has agreed to supply *rental assistance* to (the *Vendors* and) *customers* on the terms and conditions of this *Agreement*.
- D. The *customers* wish to acquire the *Goods* for commercial purposes to be used in the course of business.

IT IS AGREED:

1. Definitions

- (a) “*Agreement*” means this *Agreement* and any variations or amendments made in accordance with this *Agreement*.
- (b) “*Available for remarketing*” means the *Returned Equipment* has been repaired and is in a saleable condition.
- (c) “*buyer*”/”*Hirer*” means the person or company which purchases and/or rents the *Goods* from *GoGetta* pursuant to a *Rental Agreement*.
- (d) “*customer*” means the same as *buyer*”/”*Hirer*”
- (e) “*Goods*” means the goods/equipment sold / distributed by the *Vendor* from time to time.
- (f) “*GST*” means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.
- (g) “*in writing*” includes any communication by letter, e-mail, or fax sent (or received) in accordance with **Clause 14** of this *Agreement*.
- (h) “*includes*” means includes without limitation.
- (i) “*Master Rental Agreement*” means a rental agreement entered into by and between the *Vendor/s* and *GoGetta*, which allows the adding and deletion of *Goods* without entering into separate *Rental Agreements* on each occasion, such *Master Rental Agreement* to be on terms to the sole satisfaction of *GoGetta*.
- (j) “*Operative Period*” in relation to any *Goods* which form the subject matter of a *Rental Agreement* means the period beginning when the *Goods* were first supplied under any *Rental Agreement* and ending two (2) years later.
- (k) “*original invoice value*” means the cash price (including *GST*) of the *Goods* as stated in the invoice issued to *GoGetta* at the time the *Rental Agreement* is entered into.
- (l) “*Rental Agreement*” means the rent-try-buy agreement between *GoGetta* and the *buyer*”/”*Hirer*” in relation to the *Goods*.
- (m) “*rental assistance*” means the provision of finance by *GoGetta* to a *buyer* pursuant to a *Rental Agreement*.
- (n) “*Remarketing Period*” means the period commencing on the day of the *Returned Equipment* first being made available for remarketing by the *Vendor*, and ending ninety (90) days later.

- (o) “*Returned Equipment*” means the *Goods* collected / returned in accordance with **Clause 18**.
- (o) “*Security Bond*” in relation to a *Rental Agreement* means:
The sum payable by the Buyer/Hirer to GoGetta/”The Owner” and specified on the Rental Agreement.
- (p) “*Used cost price*” means the price of the *Goods* as calculated in accordance with Clause 18 (2).
- (q) “*Vendor*” means the stockist approved for the sale and/or rental of the *Goods* for the purposes of this *Agreement*.
- (r) “*Encumbrance*” means any mortgage, equitable mortgage, charge, pledge, lien, bill of sale, chattel lease, or security in or relation to the *Goods*

2. Interpretation

Unless expressed to the contrary, in this document:

- (1) words in the singular include the plural and vice versa;
- (2) any gender includes the other genders;
- (3) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (4) headings, italics and boldings are for convenience only and do not affect the interpretation of this document;
- (5) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (6) a reference to:
 - (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (b) any legislation or subordinate legislation includes any corresponding later legislation or subordinate legislation; and
 - (c) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation,

3. Period

This *Agreement* enters into force on the date specified in **Schedule 2** and continues until terminated in accordance with the provisions of this *Agreement*, or the period beginning when the *Goods* were first supplied under any *Rental Agreement* and ending two (2) years later.

4. Provision of Finance

- (1) The *Vendor* will distribute / market the *Goods* on a rent-try-buy basis pursuant to the *Rental Agreement* as agreed between *GoGetta* and the *buyer*.
- (2) If requested (either in writing or verbally) by the *Vendor*, *GoGetta* may, at its sole discretion, provide rental assistance to the *buyer* on terms and conditions as agreed between *GoGetta* and the *buyer*.
- (3) A request in writing under **Clause 4(2)** must include a copy of the invoice for the *Goods* and a completed application for rental assistance in the *approved form* issued by *GoGetta*, signed by the *buyer*.
- (4) In this **Clause**, “*approved form*” means the form for application for *rental assistance* approved by *GoGetta* from time to time.

5. Termination

- (1) Either Party may terminate this *Agreement* by giving one (1) month's notice in writing to the other, subject to the following –
 - (a) The Parties' obligations under **Clause 4** (i.e. the provision of *rental assistance* for new Goods) end at midnight on the day on which that notice expires and the Parties agree not to enter into any new *Rental Agreements* under **Clause 4** from that time; and
 - (b) The Parties' obligations under **Clause 18** (i.e. the re-marketing of *Goods* the subject of this *Agreement*) will continue until the later of the following –
 - i. the expiration of all *Rental Agreements* entered into in accordance with the terms of this *Agreement*;
 - ii. the re-sale or re-rental of all *Returned Equipment* in accordance with **Clause 18**.
 - (c) The obligations of both parties under this *Agreement* shall finally terminate at the expiry of all obligations under Schedule **Clause 18**.
- (2) Any termination by either Party under the provisions of this *Agreement* will not prejudice or otherwise affect the rights of either Party at law or otherwise arising from any breach of this *Agreement* prior to the date of termination.

6. Taxes, Stamp Duties and Other Charges

- (1) *GoGetta* will stamp and register this *Agreement* in any State or Territory of Australia as is required by law.
- (2) If *GST* is imposed on any supply made by *GoGetta* pursuant to this *Agreement*, the *Vendor* must pay, the imposed *GST* rate.

7. Time of the Essence

Time shall be of the *essence* in this *Agreement*.

8. Partnership and Joint Venture

- (1) The Parties acknowledge that upon entering this *Agreement*, they do not intend to form a *partnership* or joint venture in the conduct of their respective businesses or *otherwise*.
- (2) Nothing in these conditions shall be read or applied in such a way as to expressly or impliedly form a *partnership* or joint venture between the Parties.

9. Warranties

- (1) The *Vendor* warrants, if it is a company, that it is duly incorporated according to law and has capacity to enter into and complete this *Agreement*.
- (2) The *Vendor* warrants, if it is an individual, that it has capacity to enter into and complete this *Agreement*.
- (3) The *Vendor* warrants that it is the legal and beneficial owner of the Goods and has authority to deal with them in accordance with this *Agreement*.
- (4) The *Vendor* warrants that the Goods will be free from Encumbrance upon the execution of clause 17(3).

- (5) The *Vendor* unconditionally and irrevocably indemnifies GoGetta against any loss or damage it may suffer, including but not limited to the purchase price for the Goods, due to: -
- a) Any breach of warranty or other terms under this Agreement, or any conduct by the Vendor at any time, whether directly or indirectly wherein GoGetta is unable to enforce its rights to recover, remarket and re-rent the Goods.
- (6) The Vendor agrees that upon GoGetta issuing a statement in writing made up from the books and records of GoGetta and signed by an authorised officer of GoGetta for an account of loss and damage under clause 9(5) that this is conclusive evidence that the amount is due and owing as a liquidated amount pursuant to this Agreement and of all matters set out in the statement, and shall be paid by the Vendor to GoGetta within 7 days.

10. Entire Agreement

- (1) This *Agreement* contains the entire understanding and agreement between the Parties as to the subject matter of this *Agreement*.
- (2) All previous negotiations, understanding, representations, warranties, memoranda or commitments in relation to, or any way affecting, the subject matter of this *Agreement* are merged in and superseded by this *Agreement* and shall be of no force or effect whatever and no Party shall be liable to any other Party in respect of these matters.
- (3) No oral explanation or information provided by any Party to another shall:
 - (a) affect the meaning or interpretation of this *Agreement*; or
 - (b) constitute any collateral agreement, warranty or understanding between any of the Parties.
- (4) This *Agreement* shall only be varied or amended by a document in writing duly executed by both Parties.

11. Further Assurance

All parties must do all things reasonably necessary to give full effect to this *Agreement* and the transactions contemplated by this *Agreement*.

12. Waiver

- (1) A single or partial exercise or waiver of a right relating to this *Agreement* by either Party will not prevent any other exercise of that right or the exercise of any other right by that Party.
- (2) A Party will not be liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13. Severability

Should any clause or provision of this *Agreement* be deemed invalid or void for any reason whatsoever, such clause will be severed and all other clauses shall continue to be effective and binding.

14. Service of Notices

Any notice, demand, direction, permission, control, authorisation, or other communication (each a “notice”) required or permitted, whether expressly, or by necessary implication, to be given under this *Agreement* is:

- (a) to be in writing addressed to the address of the intended recipient shown in this contract or to such

other address as has been most recently notified by the intended recipient to the Party giving the notice.

- (b) to be signed by a person duly authorised by the sender; and
- (c) be deemed to have been given and served:
 - (i) where delivered by hand or by courier, at the time of delivery;
 - (ii) where sent by ordinary mail, seven (7) days after the day of posting;
 - (iii) where dispatched by security post on the seventh day after the date on which the notice is accepted for posting by the relevant postal authorities;
 - (iv) where dispatched by facsimile transmission, at the time recorded on the transmitting machine;
 - (v) where dispatched by email, when the sender's computer indicates that the message has been received and that it has not bounced, but if such delivery or receipt is later than 5.00 pm (local time) on a business day, the notice is deemed to have been given and served on the next business day.

15. Law of Queensland

- (1) This *Agreement* is governed by and construed in accordance with the laws of Queensland.
- (2) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Brisbane, Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings brought in those courts.

16. Counterparts

This *Agreement* may be signed or executed in a number of counterparts as if the signatures to or executions of each counterpart were on the same instrument.

17. Additional Provisions

- (1) The Parties agree additional provisions to this *Agreement* may be specified in **Schedule 3** and any additional provisions contained in **Schedule 3** shall be deemed to form part of this *Agreement*.
- (2) If there is any inconsistency between the provisions of this *Agreement* and the additional provisions contained in **Schedule 3**, the additional provisions contained in **Schedule 3** shall prevail.
- (3) Upon payment by GoGetta to the *Vendor* for the Goods as agreed from time to time, the *Vendor* transfers, assigns and conveys title, both legal and beneficial in the Goods, to GoGetta free from all Encumbrance.
- (4) Despite any other clause in this *Agreement*, where the Goods are held by the *Vendor* on consignment or under a bailment arrangement the *Vendor* shall, prior to payment by GoGetta, arrange for a release by the owner for any claim to title in the Goods, or otherwise a transfer of the title in the Goods to GoGetta.
- (5) GoGetta will from time to time audit equipment sold under this remarketing agreement and if the specifications of the equipment varies to that contained in the *Vendor's* invoice will seek remedy from the *Vendor* for any loss incurred by GoGetta.

18. Responsibilities under this agreement.

Once the Returned Equipment is available for remarketing, GoGetta and the *Vendor* agree that the *Returned Equipment*, at the sole discretion of GoGetta, may be remarketed under the terms below:

GoGetta agrees it will;

- i. Reimburse the *Vendor* for cleaning and repair costs associated with returning the *Returned Equipment* to a saleable condition provided a quotation for the work is supplied to GoGetta and a purchase order for the work is issued by GoGetta.
- ii. If the supplied quotation is not accepted by GoGetta, GoGetta will engage an independent contractor at GoGetta's expense to make the necessary repairs. GoGetta will provide the *Vendor* an opportunity to match an external quote.
- iii. If an independent contractor is appointed, the remarketing period commences when the *Returned Equipment* is returned to *Vendor* in a saleable condition.

The *Vendor* agrees it will;

- i. When required collect the *Returned Equipment* from the buyer at GoGetta expense.
- ii. The *Vendor* will assess the *Returned Equipment* and provide a quotation for work to return the *Returned Equipment* to saleable condition.
- iii. The *Returned Equipment* will be made available for remarketing no later than Forty-Five (45) days from the date the *Returned Equipment* is returned to or collected by the *Vendor*.
- iv. If the *Returned Equipment* is not sold or re-rented within the *Remarketing Period*, the *Vendor* must either purchase the *Returned Equipment* from GoGetta or rent the *Returned Equipment* from GoGetta based on the used cost price as calculated below
- v. The **calculation of the Used Cost Price** is based on the time elapsed from the initial sale and is calculated as follows:
 - a. If the period since the initial sale is equal to or less than 18 months, the Used Cost price is 50% of the *original invoice value*
 - b. If the period is 19 months to 24 months the Used Cost price is 35% of the *original invoice value*.
- vi. If the *Returned Equipment* is sold by the *Vendor* within the remarketing period, the *Vendor* will pay GoGetta the Used Cost price (as calculated above).
- vii. If the *Returned Equipment* is re-rented to a new hirer introduced by the *Vendor* within the remarketing period, GoGetta will process the rental application. When the contract has been approved and is in place, GoGetta will pay the *Vendor* the difference of the Used Cost Price (as calculated above) and the Equipment Value to which the new Rental Contracts is based upon.

19. Credit Enquiries

Pursuant to SS.18K(1) and 18N(1) of the Privacy Act of 1988 and paragraph 2.12 of the Credit Reporting Code of Conduct issued under S.18A of that Act, you hereby agree to Go Getta Equipment Funding Pty Ltd obtaining personal information from a credit reporting agency or a credit provider for the purposes of assessing this application for commercial remarketing and agree to that agency providing that information to Go Getta Equipment Funding Pty Ltd for that purpose. Furthermore, you hereby agree to GoGetta Equipment Funding obtaining this information on a periodic basis as part of its ongoing risk management obligations.

Schedule 1 – Vendor Details

Name of Vendor: _____

ACN (if Company): _____

Address: _____

Schedule 2 – Commencement Date

Commencement Date: _____
(if no date is stated, the Parties agree the Commencement date shall be the date of this Agreement)

Schedule 3 – Additional Provisions

Additional Provisions:

(In the event of any inconsistency between these additional provisions and the provisions contained in the agreement, these additional provisions shall prevail)

Signed by both parties to agreement

GoGetta

Vendor

AGREEMENT dated the _____ day of _____ 201 ____.

Executed by the Parties as an agreement

EXECUTED BY GoGetta Equipment Funding Pty }
Ltd ACN 124 102 647 in accordance with }
Section 127 of the *Corporations Act 2001* (Cth): }

.....
Duly Authorised Officer

.....
Name (please print)

If the Vendor is a Company:

EXECUTED BY the Vendor in }
accordance with Section 127 of the }
Corporations Act 2001 (Cth): }

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

OR

If the Vendor is an Individual or Partnership:

SIGNED by the Vendor in the }
presence of: }

.....
Witness

.....
Name (please print)

.....
Vendor

.....
Name (please print)

Version History.

Version	Date	Changes
6	14.11.11	Change to Clause 19
5	13.09.11	Changes to Clause 18 (vi)
4	14.12.10	Changes to Clause 9
3	28.10.10	Changes re clear title obligations and consignment stock