

**1. Definitions**

- 1.1 "Owner" shall mean **Bay Machinery Hire Limited**, its successors and assigns or any person acting on behalf of and with the authority of the Owner.
- 1.2 "Hirer" means the person/s hiring the Equipment or any person acting on behalf of and with the authority of the Hirer requesting the Owner to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Hirer, is a reference to each Hirer jointly and severally; and
  - (b) if the Hirer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Hirer's executors, administrators, successors and permitted assigns.
- 1.3 "Equipment" means all Equipment (including but not limited to, marquees, tables, chairs, lighting, linen, crockery, tableware, and all associated catering items, any machine, pumps, generators, entertainment equipment, ladders and scaffolding, scissorlift, bobcats, trailers, lawnmowers, hand tools, port-a-loos or any other Equipment or things attached thereto supplied for hire to the Hirer by the Owner, at the Hirer's request from time to time, and:
- (a) includes any erection, dismantling and transport of the Equipment ("**Services**"), any parts, accessories and/or consumables supplied by the Owner to the Hirer, either separately or deposited incidentally by the Owner in the course of it conducting, or supplying to the Hirer, the Equipment; and
  - (b) where the context so permits the terms 'Equipment' or 'Services' shall be interchangeable for the other.
- 1.4 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
- 1.5 "Trade Hirers" are only those Hirer's whom the Owner has agreed is currently entitled to trade credit terms.
- 1.6 "Charges" shall mean the cost payable (plus any GST) for the hire of the Equipment as agreed between the Owner and the Hirer subject to clause 6 of this contract.

**2. Acceptance**

- 2.1 The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions upon written acceptance from the Hirer at the time of placing an order and/or accepts delivery of any Equipment.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Hirer and the Owner.
- 2.3 The Hirer acknowledges that the supply of Equipment on credit shall not take effect until the Hirer has completed a credit application with the Owner and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Equipment request exceeds the Hirer's credit limit and/or the account exceeds the payment terms, the Owner reserves the right to refuse delivery. NO credit will be extended to overdue accounts.
- 2.5 Where the Hirer requesting or organising the Owner to provide Services is acting on behalf of any third party and that third party is intended to be responsible for the payment of the Charges then in the event that the third party does not pay for the Services when due, the Hirer acknowledges that they shall be liable for the payment of the Charges as if they had contracted the Services on their own behalf.
- 2.6 Any advice, recommendation, information, assistance or service provided by the Owner in relation to Equipment supplied is given in good faith, is based on the Owner's own knowledge and experience and shall be accepted without liability on the part of the Owner and it shall be the responsibility of the Hirer to confirm the accuracy and reliability of the same in light of the use to which the Hirer makes or intends to make of the Equipment.
- 2.7 None of the Equipment shall be sublet or cross-hired by the Hirer. The Hirer shall not assign or transfer its interest in the contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of the Owner, which may be arbitrarily withheld.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.9 The Hirer acknowledges:
- (a) "good working order" means, in respect to the Equipment, that:
    - (i) the Equipment is in good condition and good appearance throughout; and
    - (ii) the Equipment has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.
- 2.10 The Owner will:
- (i) provide the Equipment in good working order; and
  - (ii) allow the Hirer exclusive use of the Equipment during the Hire Term.
- 2.11 For security against damage, theft, loss or late payment fees incurred by the Hirer in relation to the hire of Equipment the Hirer agrees to accurately complete and sign the Credit Card Authorisation Form, the contents of which shall form part of this agreement. Further, the Hirer agrees to provide photo ID containing proof of the Hirers current address prior to the Hirer taking possession of the Equipment on hire.

**3. Errors & Omissions**

- 3.1 The Hirer acknowledges and accepts that the Owner shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Owner in the formation and/or administration of this contract; and/or
  - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Owner in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Owner; the Hirer shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Authorised Representatives**

- 4.1 The Hirer acknowledges that the Owner shall (for the duration of the hire period) liaise directly with one (1) authorised representative, and that once introduced as such to the Owner, that person shall have the full authority of the Hirer to order any further Equipment and/or to request any variation thereto on the Hirer's behalf. The Hirer accepts that they will be solely liable to the Owner for all additional costs incurred by the

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Owner (including the Owner's profit margin) in providing any Services or variation/s requested thereto by the Hirer's duly authorised representative.

### 5. Change in Control

- 5.1 The Hirer shall give the Owner not less than fourteen (14) days prior written notice of any proposed change of ownership of the Hirer and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's name, address and contact phone or fax number/s, change of trustees or business practice). The Hirer shall be liable for any loss incurred by the Owner as a result of the Hirer's failure to comply with this clause.

### 6. Charges And Payment

- 6.1 At the Owner's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by the Owner to the Hirer in respect of Equipment supplied; or
  - (b) the Charges as at the date of delivery of the Equipment according to the Owner's current Charges list; or
  - (c) the Owner's quoted Charges (subject to clause 6.2) which is subject to a site inspection, and shall be binding upon the Owner provided that the Hirer shall accept the Owner's quotation in writing within thirty (30) days.
- 6.2 The Owner reserves the right to change the Hire Charges:
- (a) if a variation to the Equipment which is to be supplied is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of Equipment, safety considerations etc) which are only discovered on commencement of the Services;
  - (c) in the event of increases to the Owner in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond the Owner's control.
- 6.3 Variations will be charged for on the basis of the Owner's quotation, and will be detailed in writing, and shown as variations on the Owner's invoice. The Hirer shall be required to respond to any variation submitted by the Owner within ten (10) working days. Failure to do so will entitle the Owner to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 6.4 **Deposit**
- (a) a non-refundable deposit is required to secure a booking with the balance being payable before pick up and/or delivery of the Equipment. The deposit payment forms part of the total payment due for the Equipment and is separate from the bond payment; and
  - (b) the deposit may be used to offset any applicable charges payable by the Owner under clause 8.3(b), and any outstanding balance thereof shall be due as per clause 6.6.
- 6.5 **Refundable Bond**
- (a) A refundable bond is payable for Equipment provided on hire and will be refunded if the Equipment are returned in good order and working condition. If the Equipment returned are unclean, missing items, stained, or damaged in any way, the bond will be retained by the Owner. The refund will be processed within twenty-eight (28) days of the expiry/return date of the Equipment, whichever occurs first.
- 6.6 Time for payment for the hire of the Equipment being of the essence, the Charges will be payable by the Hirer on the date/s determined by the Owner:
- (a) Hire Charges which may be:
    - (i) **Half Day** – means four (4) hours or overnight providing the Equipment is picked up after 4.00pm and returned by 8.30am the following day (maximum usage time four (4) hours);
    - (ii) **Daily** – means twenty-four (24) hours (maximum usage time eight (8) hours): if the weekly rate is less than the accumulated daily rate, then the weekly hire rate will apply;
    - (iii) **Weekly** – means seven (7) days (maximum usage time forty (40) hours);
    - (iv) **Monthly** – means 4 x weeks (maximum usage time one hundred and sixty (160) hours).
  - (b) by way of instalments/progress payments in accordance with the Owner's payment schedule; or
  - (c) for certain approved Hirers, due twenty (20) days following the end of the month in which a statement is posted to the Hirer's address or address for notices; or
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Hirer by the Owner.
- 6.7 With respect to "Non Trade Hirers" time for payment shall be made on the date when the Equipment is returned, or within seven (7) days of the commencement of the hire period, whichever is earlier. Where the hire period is extended to more than seven (7) days then the hire charge shall be payable at the end of each seven (7) day period in respect of the prior seven (7) days and at the end of the term of hire in respect of the hire period not previously paid for.
- 6.8 Payment will be made by cheque, electronic/on-line banking, eftpos, Farmlands (if applicable) or by any other method as agreed to between the Hirer and the Owner.
- 6.9 The Hirer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 The Hirer acknowledges and agrees that the Hirer's obligations to the Owner for the supply of Equipment on hire shall not cease until:
- (a) the Hirer has paid the Owner all amounts owing for the hire of the Equipment; and
  - (b) the Hirer has met all other obligations due by the Hirer to the Owner in respect of all contracts between the Owner and the Hirer.
- 6.11 Receipt by the Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Owner's ownership or rights in respect of this contract shall continue.
- 6.12 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 7. Provision of the Services

- 7.1 Delivery of the Equipment and/or Services ("**Delivery**") is taken to occur at the time that the Owner (or the Owner's nominated carrier) delivers the Equipment and/or Services (in the case of Equipment, where it is installed and hand-over certificate is issued) to the Hirer's nominated

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- address, even if the Hirer is not present at the address. In the event the Hirer (or a representative thereof) is not present at the time of Delivery, the Owner's delivery docket remains prima facie evidence of such.
- 7.2 Return of the Equipment ("**Return**") will be completed when the Equipment has been accepted by the Owner, by their off-hire docket. Where the Equipment is returned by the Hirer's transport, the Equipment returned shall be counted in the Owner's yard and the off-hire docket issued to the Hirer shall be conclusive proof of the Return of the quantities of Equipment listed thereon, but not of its condition at the time of Return. If the Hirer collects the Equipment, it will be checked on arrival in the Owner's yard for quantity and condition. In both cases the check in the Owner's yard for quantity and condition will be the only legal proof of the quantity and condition of Equipment returned.
- 7.3 Unless otherwise agreed to by the Owner, a request made by the Hire to collect the Equipment and/or terminate this contract, must be made in writing and received by the Owner at least three (3) business days prior to the requested date of collection and/or termination, and:
- the loading of the Equipment collected by the Owner is the responsibility of the Hirer; and
  - the Owner reserves the right to charge the Hirer for the cost of Equipment hired (and the cost of labour) incurred for any cancellation or termination of this contract, or any alteration to the Equipment to be supplied and/or the hire period.
- 7.4 Unless otherwise agreed between the parties in writing, the Owner shall provide (as the Hirer's agent) transport of the Equipment to and from the Site, and transport charges (including loading equipment):
- shall, at the sole discretion of the Owner, be in addition to, the Charges, unless otherwise specified; and
  - are quoted on the basis of Delivery and/or collection of the Equipment of a full load. Small loads, or part loads, will incur additional Charges; and
  - allow for a maximum of ninety (90) minutes loading or unloading time per visit to the Site during the Owner's normal business hours. Delivery and/or collection of the Equipment (including any waiting time) outside the Owner's normal business hours will incur additional charges.
- 7.5 The Owner may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by the Owner for Delivery is an estimate only and the Owner will not be liable for any loss or damage incurred by the Hirer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Owner is unable to supply the Equipment as agreed solely due to any action or inaction of the Hirer then the Owner shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date.
- 7.7 The Owner shall not be responsible for delay or non-completion of the job for which the Equipment is hired resulting from an act beyond the reasonable control of the Owner, including but not limited to, industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather.
- 7.8 The Hirer shall ensure that the Owner has clear and free access to the nominated address at all times to enable them to make Delivery. The Owner shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Owner.
- 7.9 In the event of Wet Hire, the operator responsible for the Equipment remains an employee of the Owner and shall erect the Equipment in accordance with the Hirer's instructions. The Owner shall not be liable for any actions of the operator in following the Hirer's instructions.
- 8. Use, Operation and Maintenance of the Equipment**
- 8.1 *Hire Period:*
- The Hire Period shall:
    - commence from the time the Equipment depart from the Owners premises, and will continue until the return of the Equipment to the Owner's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional charges will apply in the event that the Hirer requests an extension of the Hire Period;
    - be based on a daily, weekly (being seven (7) days) or monthly (calendar month) cycle.
  - The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.
- 8.2 Stand down:
- will only be applicable where agreed to in writing between the parties prior to the commencement of the Hire Term. Otherwise, any request by the Hirer to the Owner will be, in the first instance, orally and confirmed in writing for consideration by the Owner. Adjustment to Hire Charges will be made on the merit of such request, and only in accordance with this clause. In the event of breakdown of the Equipment, provided the Hirer notifies the Owner immediately, hire charges will not be payable during the time the Equipment is not functional, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer;
  - is usually charged to the Hirer at fifty percent (50%) of the daily Hire Charges, unless otherwise agreed in writing between the parties prior to the stand down.
- 8.3 *Hirer's Obligations:*
- The Hirer shall:
    - satisfy itself on Delivery that the Equipment are suitable for its purposes;
    - maintain the Equipment as is required by the Owner;
    - notify the Owner immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or accident in connection with the Equipment. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification.
    - use the Equipment safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their use and any other relevant laws and regulations), only for their intended use, and in accordance with any manufacturer's instruction, whether supplied by the Owner or posted on the Equipment;
    - ensure the security and safekeeping of the Equipment whilst being used, and that all persons who use the Equipment are competent and qualified to use the Equipment as required by current Occupational Safety and Health Guidelines;
    - keep the Equipment in their own possession and control and shall not assign the benefit of this hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment. This does not prevent the employees of the Hirer using the Equipment;

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- (vii) not alter or make any additions to the Equipment (including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on the Equipment), or in any other manner interfere with the Equipment, as doing so may undermine the structure and safety of the Equipment. the Owner will photograph, in detail, the Equipment once erected as proof of this;
  - (viii) employ the Equipment solely in their own work and not permit the Equipment (or any part thereof) to be used by any other party for any other work;
  - (ix) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (x) not use or place any illegal, prohibited or dangerous substance on the Equipment;
  - (xi) not fix the Equipment (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold;
  - (xii) on termination of the hire, deliver up the Equipment, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear accepted, to the Owner.
- (b) Immediately on request by the Owner the Hirer will pay:
- (i) the new list Charges of any Equipment (or any part thereof) that are, for whatever reason, destroyed, irrecoverable, or not returned to the Owner;
  - (ii) all costs incurred in cleaning the Equipment (including removing plaster, mortar, cement and/or concrete from the Equipment) if the Equipment are deemed by the Owner (at their sole discretion) to be excessively dirty;
  - (iii) all costs of repairing any damage to the Equipment caused by:
    - A. the ordinary use of the Equipment up to an amount equal to 20% of the new list Charges of the Equipment;
    - B. caused by the negligence of the Hirer or the Hirer's agent;
    - C. caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
- (c) any lost hire charges the Owner would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
- (d) the cost of fuels and consumables provided by the Owner and used by the Hirer;
- (e) subject to clause 11, any insurance excess payable in relation to a claim made by the Hirer in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Hirer.
- 8.4 Only to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal) shall clause 17 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters clause 17 will apply generally for the purposes of the PPSA. The Hirer agrees that the Owner may register a security interest as a Purchase Money Security Interest ("PMSI") for the purposes of the PPSA in favour of the Owner over the Equipment supplied.
- 8.5 No warranty is given by the Owner as to the quality or suitability of the Equipment for any purpose, and any implied warranty is expressly excluded. The Hirer shall indemnify and hold harmless the Owner in respect of all claims arising out of the use of the Equipment.

### 9. Inspection of Equipment

- 9.1 The Hirer hereby grants the Owner (including its employees, duly authorised agents or representatives) the right, at all times, upon the Owner giving to the Hirer reasonable notice and without unduly interfering with the Hirer's business or operations, to:
- (a) enter onto the site(s) where the Equipment or any part thereof may be located;
  - (b) inspect the state of repair or condition of the Equipment;
  - (c) carry out any such tests on the Equipment as may be reasonably necessary including but not limited to, health and safety tests or inspections;
  - (d) observe the use of the Equipment by the Hirer; and
  - (e) do any act, matter or thing which may be required at law or to otherwise protect the Owner's rights or interests in the Equipment.

### 10. Title

- 10.1 The Equipment is and will at all times remain the absolute property of the Owner, however the Hirer accepts full responsibility for:
- (a) the safekeeping of the Equipment and indemnifies the Owner for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Hirer; and
  - (b) shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.
- 10.2 The Hirer will insure, or self-insure, the Owner's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment, and if called upon the Hirer, shall produce evidence of such insurance to the Owner. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim;
- 10.3 The Hirer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 10.4 If the Hirer fails to return the Equipment to the Owner then the Owner or the Owner's agent may (as the invitee of the Hirer) enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the Equipment.

### 11. Insurance

- 11.1 The Hirer hires the Equipment at the Hirer's own risk and indemnifies the Owner against any and all loss in respect of or damage to the Equipment, including any consequential loss, unless the Hirer elects to pay a Damage Waiver.
- 11.2 Damage Waiver is not insurance, but is an agreement (where applicable under a separate agreement) by the Owner that the Hirer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess. The Hirer is not entering into a contract of insurance with the Owner by paying for the Damage Waiver.

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- 11.3 The Hirer agrees with the Owner that the use of Equipment carries with it dangers and risks of injury, and the Hirer agrees to accept all dangers and risks.
- 11.4 The Owner will maintain current insurance policies in respect of the Equipment to its full insurable value.
- 11.5 In the event that the Equipment provided by the Owner is the subject of an insurance claim made by the Owner, as a result of any action or inaction of the Hirer, then the Hirer accepts full liability for the value of Equipment (or part thereof) that is lost, stolen or damaged in any way any during the entire rental term, irrespective of whether the insurance claim is successful.

### 12. Defects, Errors and Omissions

- 12.1 The Hirer shall inspect the Equipment on Delivery and shall notify the Owner of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Hirer shall afford the Owner an opportunity to inspect the Equipment within a reasonable time following such notification if the Hirer believes the Equipment is defective in any way. If the Hirer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Owner has agreed in writing that the Hirer is entitled to reject, the Owner's liability is limited to either (at the Owner's discretion) replacing the Equipment or repairing the Equipment. The Hirer must provide notification (time being of the essence) of any defect or damage within twenty-four (24) hours following Delivery for hired Equipment.
- 12.2 Equipment will not be accepted for return other than in accordance with 12.1 above.

### 13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Hirer owes the Owner any money the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Owner's collection agency costs, and bank dishonour fees).
- 13.3 Further to any other rights or remedies the Owner may have under this contract, if a Hirer has made payment to the Owner and the transaction is subsequently reversed, the Hirer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Owner under this clause 13, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Hirer's obligations under this contract.
- 13.4 Unless otherwise agreed to between the parties, any monies received from the Hirer shall be applied firstly in reduction of any outstanding Charges and interest, and secondly on account of any Charges for the hire of the Equipment.
- 13.5 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable if:
- any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to make a payment when it falls due;
  - the Hirer has exceeded any applicable credit limit provided by the Owner;
  - the Hirer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

### 14. Security and Charge

- 14.1 In consideration of the Owner agreeing to supply the Equipment, the Hirer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Hirer indemnifies the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under this clause.
- 14.3 The Hirer irrevocably appoints the Owner and each director of the Owner as the Hirer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14.1 including, but not limited to, signing any document on the Hirer's behalf.

### 15. Cancellation

- 15.1 Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under these terms and conditions the Owner may suspend or terminate the supply of Equipment to the Hirer. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.
- 15.2 The Owner reserves the absolute right to:
- cancel, terminate, or determine this contract;
  - immediately repossess the Equipment;
- at any time before or during the hire period, without reason, without prior notice, without payment of compensation and without prejudice to any other rights which the Owner may have against the Hirer. The Owner or its agents may enter any property, premises or vehicle where the Equipment may be kept, for this purpose.
- 15.3 In addition to clause 15.2 in these terms and conditions, the Owner shall be entitled to cancel the contract if:
- the Owner reasonably believes that a third party may attempt to take possession of the Equipment;
  - the Equipment is at risk.
- 15.4 In the event that the Hirer wishes to cancel this contract then the Hirer agrees to provide a minimum of seventy-two (72) hours noticed of termination of hire by either telephone or email. The Hirer shall remain liable for all hire charges due up to the time of cancellation until such notice is given.

### 16. Privacy Act 1993

- 16.1 The Hirer authorises the Owner or the Owner's agent to:

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- (a) access, collect, retain and use any information about the Hirer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Hirer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Hirer.
  - (b) disclose information about the Hirer, whether collected by the Owner from the Hirer directly or obtained by the Owner from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Hirer.
- 16.2 Where the Hirer is an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Hirer shall have the right to request the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Owner to correct any incorrect information about the Hirer held by the Owner.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Equipment previously supplied by the Owner to the Hirer (if any) and all Equipment that will be supplied in the future by the Owner to the Hirer.
- 17.2 The Hirer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Owner may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Owner.
- 17.3 The Owner and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by the Owner, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Hirer shall unconditionally ratify any actions taken by the Owner under clauses 17.1 to 17.5.
- 18. Compliance with Laws**
- 18.1 The Hirer and the Owner shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment including but not limited to, the best practice guidelines for Equipment as outlined in the Guidelines for the Provision of Facilities and General Safety in the Construction Industry Standards (including Equipment / Edge Fall Protection / Fall through Protection), and any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 18.2 The Owner has not and will not at any time assume any obligation as the Hirer's agent or otherwise which may be imposed upon the Hirer from time to time pursuant to the Health & Safety at Work Act 2015, including any subsequent regulations (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Owner shall not be the person who controls the place of work in terms of the HSW Act.
- 18.3 The Hirer shall obtain (at the expense of the Hirer) all engineering reports, certificates, and all licenses and approvals that may be required for the Equipment hire.
- 19. Construction Contract Act 2002**
- 19.1 At the Owner's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Construction Contract Act 2002 (including but not limited to, the right to suspend the contract upon written notice and seek and extension of time) may apply.
- 19.2 If the Owner exercises the right to suspend work, the exercise of that right does not:
- (a) affect any rights that would otherwise have been available to the Owner under the Contractual Remedies Act 1979; or
  - (b) enable the Hirer to exercise any rights that may otherwise have been available to the Hirer under that Act as a direct consequence of the Owner suspending work under this provision.
- 19.3 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Construction Contract Act 2002, except to the extent permitted by the Act where applicable.
- 20. Force Majeure**
- 20.1 Subject to clause 20.2, neither party shall be responsible for any delays in Delivery or collection due to causes beyond their control (including, but not limited to, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of, or inability to obtain shopping space, or land transportation).
- 20.2 Nothing in clause 20.1 will limit or exclude the Hirer's responsibility and liability under this contract for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Term, or had broken down, or become unsafe to use as a result of the Hirer's conduct or negligence.
- 21. General**
- 21.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

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## Terms & Conditions of Hire

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- 21.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts nearest to the Owner's principal place of business.
- 21.4 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions (alternatively the Owner's liability shall be limited to damages which under no circumstances shall exceed the Charges of the Equipment).
- 21.5 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 21.6 The Owner may licence and/or assign all or any part of its rights and/or obligations under this contract without the Hirer's consent.
- 21.7 The Owner may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Hirer agrees and understands that they have no authority to give any instruction to any of the Owner's subcontractors without the authority of the Owner.
- 21.8 The Hirer agrees that the Owner may amend these terms and conditions by notifying the Hirer in writing. These changes shall be deemed to take effect from the date on which the Hirer accepts such changes, or otherwise at such time as the Hirer makes a further request for the Owner to provide Equipment to the Hirer.