

Bay Machinery Hire Limited - Terms & Conditions of Hire

1.	Definitions	<p>(i) provide the Equipment in good working order, and</p> <p>(ii) allow the Hirer exclusive use of the Equipment during the Hire Term.</p> <p>(c) that by hiring any Equipment from BMH, the Hirer expressly consents to BMH's use of the GPS Device on such Equipment during the hire period and to BMH collecting, using and retaining information from the GPS Device in accordance with clause 18, and that BMH is the owner of that data subject.</p> <p>2.10 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 Contract. Further, the Hirer agrees to provide photo ID containing proof of the Hirer's current address prior to the Hirer taking possession of the Equipment on hire.</p> <p>Authorised Representatives</p> <p>The Hirer acknowledges that BMH shall (for the duration of the hire period) liaise directly with one (1) authorised representative, and that once introduced as such to BMH, 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 BMH for all additional costs incurred by BMH (including BMH's profit margin) in providing any Services or variations requested thereof by the Hirer's duly authorised representative.</p> <p>Errors and Omissions</p> <p>The Hirer acknowledges and accepts that BMH shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by BMH in the formation and/or administration of this Contract; and/or</p> <p>(b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by BMH in respect of the Services.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of BMH; the Hirer:</p> <p>(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but</p> <p>(b) shall not be responsible for any additional costs incurred by BMH arising from the error or omission.</p> <p>Change in Control</p> <p>5.1 The Hirer shall give BMH 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 BMH as a result of the Hirer's failure to comply with this clause.</p> <p>Credit Card Information</p> <p>BMH will:</p> <p>(a) keep the Hirer's personal details, including credit card details for only as long as is deemed necessary by BMH;</p> <p>(b) not disclose the Hirer's credit card details to any third party;</p> <p>(c) not unnecessarily disclose any of the Hirer's personal information, except in accordance with the Privacy Policy (clause 18) or where required by law.</p> <p>6.2 The Hirer expressly agrees that, if pursuant to this Contract, there are:</p> <p>(a) any unpaid Charges;</p> <p>(b) other amounts due and outstanding by the Hirer;</p> <p>(c) any Equipment (or any part of them) supplied on hire that are lost or damaged;</p> <p>(d) any other additional Charges are due from the Hirer which were not known at the time of the return of the Equipment;</p> <p>6.3 BMH is entitled to immediately charge the Hirer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Hirer pursuant to the terms of this Contract.</p> <p>Charges And Payment</p> <p>7.1 At BMH's sole discretion the Charges shall be either:</p> <p>(a) as indicated on invoices provided by BMH to the Hirer in respect of Equipment supplied; or</p> <p>(b) the Charges as at the date of delivery of the Equipment according to BMH's current Charges list; or</p> <p>(c) BMH's quoted Charges (subject to clause 7.2) which is subject to a site inspection, and shall be binding upon BMH provided that the Hirer shall accept BMH's quotation in writing within thirty (30) days.</p> <p>7.2 BMH reserves the right to change the Hire Charges:</p> <p>(a) if a variation to the Equipment which is to be supplied is requested; or</p> <p>(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;</p> <p>(c) in the event of increases to BMH in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond BMH's control.</p> <p>7.3 Variations will be charged for on the basis of BMH's quotation, and will be detailed in writing, and shown as variations on BMH's invoice. The Hirer shall be required to respond to any variation submitted by BMH within ten (10) working days. Failure to do so will entitle BMH 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.</p> <p>Deposit</p> <p>(a) a reasonable 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</p> <p>(b) the deposit may be used to offset any applicable Charges payable by BMH under clause 9.3(b), and</p>	<p>any outstanding balance thereof shall be due as per clause 7.6.</p> <p>Refundable Bond</p> <p>(a) a refundable bond is payable for Equipment provided on hire and will be refunded if the Equipment is returned in good order and working condition. If the Equipment returned is unclean, missing items stained, or damaged in any way, the bond will be retained by BMH. The refund will be processed within twenty-eight (28) days of the expiry/return date of the Equipment, whichever occurs first.</p> <p>8.5 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 BMH:</p> <p>(a) Hire Charges which may be:</p> <p>(i) Half Day – means four (4) hours or overnight providing the Equipment is picked up after 4.00pm and returned by 8.00am the following day (maximum usage time four (4) hours);</p> <p>(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;</p> <p>(iii) Weekly – means seven (7) days (maximum usage time thirty (30) hours);</p> <p>(iv) Monthly – means twenty-eight (28) days (maximum usage time one hundred and twenty (120) hours).</p> <p>(b) by way of instalments/progress payments in accordance with BMH's payment schedule; or</p> <p>(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</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(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 BMH.</p> <p>9.1 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.</p> <p>9.2 Payment will be made by electronic/on-line banking, eftpos, Famlands (if applicable) or by any other method as agreed to between the Hirer and BMH. BMH may in its discretion allocate any payment received from the Hirer towards any invoice that BMH determines and may do so at the time of receipt or at any time afterwards. On any default by the Hirer BMH may re-allocate any payments previously received and allocated. In the absence of any payment allocation by BMH, payment will be deemed to be allocated in such manner as preserves the maximum value of BMH's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.</p> <p>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 BMH nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>9.11 The Hirer acknowledges and agrees that the Hirer's obligations to BMH for the supply of Equipment on hire shall not cease until:</p> <p>(a) the Hirer has paid BMH all amounts owing for the hire of the Equipment; and</p> <p>(b) the Hirer has met all other obligations due by the Hirer to BMH in respect of all contracts between BMH and the Hirer.</p> <p>9.12 Receipt by BMH 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 BMH's ownership or rights in respect of this Contract shall continue.</p> <p>9.13 GST and other taxes and duties that may be applicable shall be added to the Charges except when they are expressly included in the Charge.</p> <p>Provision of the Services</p> <p>8.1 Delivery of the Equipment and/or Services ("Delivery") is taken to occur at the time that BMH (or BMH'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 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, BMH's delivery docket remains prima facie evidence of such.</p> <p>8.2 Return of the Equipment ("Return") will be completed when the Equipment has been accepted by BMH, by their off-hire docket. Where the Equipment is returned by the Hirer's transport, the Equipment returned shall be counted in BMH'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 BMH's yard for quantity and condition. In both cases the check in BMH's yard for quantity and condition will be the only legal proof of the quantity and condition of Equipment returned.</p> <p>8.3 Unless otherwise agreed to by BMH, a request made by the Hirer to collect the Equipment and/or terminate this Contract, must be made in writing and received by BMH at least three (3) business days prior to the requested date of collection and/or termination, and:</p> <p>(a) the loading of the Equipment collected by BMH is the responsibility of the Hirer; and</p> <p>(b) BMH 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.</p> <p>8.4 Unless otherwise agreed between the parties in writing, BMH shall provide (as the Hirer's agent) transport of the Equipment to and from the site, and transport charges (including loading equipment):</p> <p>(a) shall, at the sole discretion of BMH, be in addition to, the Charges, unless otherwise specified; and</p>	<p>(b) 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</p> <p>(c) allow for a maximum of ninety (90) minutes loading or unloading time per visit to the site during BMH's normal business hours. Delivery and/or collection of the Equipment (including any waiting time) outside BMH's normal business hours will incur additional charges.</p> <p>8.5 BMH 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.</p> <p>8.6 Any time specified by BMH for Delivery is an estimate only and BMH 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 BMH is unable to supply the Equipment as agreed solely due to any action or inaction of the Hirer then BMH shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date. BMH 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 BMH, including, but not limited to, industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather.</p> <p>8.8 The Hirer shall ensure that BMH has clear and free access to the nominated address at all times to enable them to make Delivery. BMH shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas), unless due to the negligence of BMH.</p> <p>In the event of wet hire, the operator responsible for the Equipment remains an employee of BMH and shall not use the Equipment in accordance with the Hirer's instructions. BMH shall not be liable for any actions of the operator in following the Hirer's instructions.</p>
1.1	"BMH" shall mean Bay Machinery Hire Limited its successors and assigns.	7.5		
1.2	"Charges" shall mean the cost payable (plus any GST) for the hire of the Equipment as agreed between BMH and the Hirer subject to clause 7 of this contract.	7.6		
1.3	"Contract" means the terms and conditions contained herein, together with any quotation, hire form, invoice or other document or amendments expressed to be supplemental to this Contract.	7.7		
1.4	"Cookies" means small files which are stored on a user's computer. They are designed to hold a mosted amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Hirer does not wish to allow Cookies to operate in the background when using BMH's website, then the Hirer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.	7.8		
1.5	"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, scissor lift, bobcats, trailers, lawnmowers, hand tools, port-a-loos or any other Equipment or things attached thereto supplied for hire to the Hirer by BMH, at the Hirer's request from time to time, and:	7.9		
1.6	(a) includes any erection, dismantling and transport of the Equipment ("Services"), any parts, accessories and/or consumables supplied by BMH to the Hirer, either separately or deposited incidentally by BMH in the course of it conducting, or supplying to the Hirer, the Equipment; and	7.10		
1.7	(b) where the context so permits the terms "Equipment or Services" shall be interchangeable for the other.	7.11		
1.8	"GPS Device" means that BMH's Equipment may contain on-board devices which enables the Equipment to be connected to the internet and to send commands to and receive certain information from the Equipment, including geolocation data from a global positioning system and other data (including, but not limited to, speed, battery voltage and ignition status) of such Equipment.	7.12		
1.9	"Hirer" means the persons hiring the Equipment or any person acting on behalf of and with the authority of the Hirer requesting BMH to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:	7.13		
2.	(a) if there is more than one Hirer, is a reference to each Hirer jointly and severally; and	8.		
2.1	(b) if the Hirer is a partnership, it shall bind each partner jointly and severally; and	8.1		
2.2	(c) if the Hirer is a partner of a Trust, shall be bound in their capacity as a trustee; and	8.2		
2.3	(d) includes the Hirer's executors, administrators, successors and permitted assigns.	8.3		
2.4	"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 BMH to the Hirer.	8.4		
2.5	"Trade Hirers" are only those Hirer's whom BMH has agreed is currently entitled to trade credit terms.	8.5		
2.6	Acceptance	8.6		
2.7	The parties acknowledge and agree that:	8.7		
2.8	(a) they have read and understood the terms and conditions contained in this Contract; and	8.8		
2.9	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for or accepts delivery of any Equipment.	8.9		
3.	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 BMH.	9.		
4.	The Hirer acknowledges that the supply of Equipment on credit shall not take effect until the Hirer has completed a credit application with BMH and it has been approved with a credit limit established for the account.	9.1		
5.	In the event that the supply of Equipment request exceeds the Hirer's credit limit and/or the account exceeds the payment terms, BMH reserves the right to refuse delivery, NO credit will be extended to overdue accounts.	9.2		
6.	Where the Hirer requesting or organising BMH 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.	9.3		
7.	Any advice, recommendation, information, assistance or service provided by BMH in relation to Equipment or Services supplied is given in good faith to the Hirer; or the Hirer's agent and is based on BMH's own knowledge and experience and shall be accepted without liability on the part of BMH. Where such advice or recommendations are not acted upon then BMH shall require the Hirer or their agent to authorise commencement of the Services in writing. BMH shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.	9.4		
8.	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 BMH, which may be arbitrarily withheld.	9.5		
9.	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.	9.6		
10.	The Hirer acknowledges:	9.7		
10.1	(a) "good working order" means, in respect to the Equipment, that:	9.8		
10.2	(i) the Equipment is in good condition and good appearance throughout; and	9.9		
10.3	(ii) the Equipment has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.	9.10		
10.4	(b) BMH will:	9.11		

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- accessories, clean and in good order, as delivered, fair wear and tear accepted, to BMH.
- (b) Immediately on request by BMH 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 BMH all costs incurred in cleaning the Equipment (including removing plaster, mortar, cement and/or concrete from the Equipment) if the Equipment are deemed by BMH (at their sole discretion) to be excessively dirty;
 - (ii) all costs of repairing any damage to the Equipment caused by:
 - (A) the ordinary use of the Equipment;
 - (B) caused by the negligence of the Hirer or the Hirer's agent;
 - (C) caused by vandalism, or (in BMH's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
- (c) any lost hire charges BMH 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 BMH and used by the Hirer;
- (e) subject to clause 12, 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.
- 9.4 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 19 apply as a security agreement in the form of a PPSA in respect of Section 36 of the PPSA, in all other matters clause 19 will apply generally for the purposes of the PPSA. The Hirer agrees that BMH may register a security interest as a Purchase Money Security Interest ("PMSI") for the purposes of the PPSA in favour of BMH over the Equipment supplied.
- 9.5 No warranty is given by BMH 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 BMH in respect of all claims arising out of the use of the Equipment.
- 10. Inspection of Equipment**
- 10.1 The Hirer hereby grants BMH (including its employees, duly authorised agents or representatives) the right, at all times, upon BMH 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 BMH's rights or interests in the Equipment.
- 11. Title**
- 11.1 The Equipment is and will at all times remain the absolute property of BMH, however the Hirer accepts full responsibility for:
- (a) the safekeeping of the Equipment and indemnifies BMH 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 BMH 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.
- 11.2 The Hirer will insure, or self-insure, BMH'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 BMH. 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.
- 11.3 The Hirer is not authorised to pledge BMH's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 11.4 If the Hirer fails to return the Equipment to BMH then BMH or BMH'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.
- 12. Insurance**
- 12.1 The Hirer hires the Equipment at the Hirer's own risk and indemnifies BMH 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.
- 12.2 The damage waiver is not insurance, but is an agreement (where applicable under a separate agreement) by BMH 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 BMH by paying for the damage waiver.
- 12.3 The Hirer agrees with BMH that the use of Equipment carries with it dangers and risks of injury, and the Hirer agrees to accept all dangers and risks.
- 12.4 BMH will maintain current insurance policies in respect of the Equipment to its full insurable value.
- 12.5 In the event that the Equipment provided by BMH is the subject of an insurance claim made by BMH, 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 during the entire rental term, irrespective of whether the insurance claim is successful.
- 13. Defects, Errors and Omissions**
- 13.1 The Hirer shall inspect the Equipment on Delivery and shall notify BMH of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Hirer shall afford BMH 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 BMH has agreed in writing that the Hirer is entitled to reject, BMH's liability is limited to either (at BMH'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.
- 13.2 Equipment will not be accepted for return other than in accordance with 13.1 above.
- 14. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 14.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 ("CGA") in all cases except where the Hirer is not contracting as a consumer within the meaning of the CGA.
- 14.2 BMH agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
- 15. Default and Consequences of Default**
- 15.1 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 BMH's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Hirer owes BMH any money the Hirer shall indemnify BMH from and against all costs and disbursements incurred by BMH in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, BMH's collection agency costs, and bank dishonour fees). Further to any other rights or remedies BMH may have under this contract, if a Hirer has made payment to BMH 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 BMH under this clause 15, 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.
- 15.4 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.
- 15.5 Without prejudice to BMH's other remedies at law BMH shall be entitled to cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to BMH shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to BMH becomes overdue, or in BMH's opinion the Hirer will be unable to make a payment when it falls due;
 - (b) the Hirer has exceeded any applicable credit limit provided by BMH;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.
- 16. Security and Charge**
- 16.1 In consideration of BMH 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, and the Hirer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s209 of the Land Transfer Act 2017.
- 16.2 The Hirer indemnifies BMH from and against all BMH's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising BMH's rights under this clause.
- 16.3 The Hirer irrevocably appoints BMH and each director of BMH as the Hirer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Hirer's behalf.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Equipment on hire to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 17.2 If BMH, due to reasons beyond BMH's reasonable control, is unable to deliver any Equipment to the Hirer, BMH may cancel these terms and conditions or cancel Delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice BMH shall repay to the Hirer any sums paid in respect of the Charges. BMH shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.3 In accordance with clause 17.2, BMH reserves the absolute right to 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 BMH may have against the Hirer. BMH or its agents may enter any property, premises, or vehicle where the Equipment may be kept, for this purpose.
- 17.4 In addition to clause 17.1 in these terms and conditions, BMH shall be entitled to cancel the Contract if:
- (a) BMH reasonably believes that a third party may attempt to take possession of the Equipment;
- (b) the Equipment is at risk.
- In the event that the Hirer wishes to cancel this Contract then the Hirer agrees to provide a minimum of seventy two (72) hours notice 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.
- 18. Privacy Policy**
- 18.1 All emails, documents, images or other recorded information held or used by BMH is "Personal Information" as defined and referred to in clause 18.3 and therefore considered confidential. BMH acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. BMH acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Hirer's Personal Information, held by BMH that may result in serious harm to the Hirer, BMH will notify the Hirer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Hirer by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to BMH in respect of Cookies where the Hirer utilises BMH's website to make enquiries. BMH agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Hirer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to BMH when BMH sends an email to the Hirer, so BMH may collect and review that information ("collectively Personal Information")
- If the Hirer consents to BMH's use of Cookies on BMH's website and later wishes to withdraw that consent, the Hirer may manage and control BMH's privacy controls via the Hirer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Hirer authorises BMH or BMH's agent to:
- (a) access, collect, retain and use any information about the Hirer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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 BMH from the Hirer directly or obtained by BMH 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.
- 18.4 Where the Hirer is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 18.5 The Hirer shall have the right to request (by e-mail) from BMH, a copy of the Personal Information about the Hirer retained by BMH and the right to request that BMH correct any incorrect Personal Information.
- 18.6 BMH will destroy Personal Information upon the Hirer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.7 The Hirer can make a privacy complaint by contacting BMH via e-mail. BMH will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 19. Personal Property Securities Act 1999 ("PPSA")**
- 19.1 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 that have previously been supplied and that will be supplied in the future by BMH to the Hirer, and the proceeds from such Equipment as listed by BMH to the Hirer in invoices rendered from time to time.
- 19.2 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 BMH may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, BMH 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, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment or the proceeds of such Equipment in favour of a third party without the prior written consent of BMH.
- 19.3 Unless otherwise agreed to in writing by BMH, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 19.4 The Hirer shall unconditionally ratify any actions taken by BMH under clauses 19.1 to 19.3.
- 19.5 Subject to any express provisions to the contrary (including those contained in this clause 19), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 20. Compliance with Laws**
- 20.1 The Hirer and BMH 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.
- 20.2 BMH 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, BMH shall not be the person who controls the place of work in terms of the HSW Act.
- 20.3 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.
- 21. Construction Contract Act 2002**
- 21.1 At BMH'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.
- 21.2 If BMH exercises the right to suspend work, the exercise of that right does not:
- (a) affect any rights that would otherwise have been available to BMH under the Contract and Commercial Law Act 2017; 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 BMH suspending work under this provision.
- 21.3 Nothing in this Contract 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.
- 22. Force Majeure**
- 22.1 Subject to clause 22.2, 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, national or global pandemics and/or orders or regulations of governments of any relevant jurisdiction, any Government imposed border lockdowns, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shopping space, or land transportation), ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Hirer to make a payment to BMH, following cessation of a Force Majeure.
- 22.2 Nothing in clause 22.1 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.
- 23. General**
- 23.1 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).
- 23.2 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.
- 23.3 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 BMH's principal place of business.
- 23.4 Subject to the CGA, the liability of BMH and the Hirer under this Contract shall be limited to the Charges.
- 23.5 BMH may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Hirer's consent provided the assignment does not cause detriment to the Hirer.
- 23.6 BMH 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 BMH's sub-contractors without the authority of BMH.
- 23.7 The Hirer agrees that BMH 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 BMH to provide Equipment to the Hirer.
- 23.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.