

TOOL HIRE TARANAKI - TERMS & CONDITIONS

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Hirer', 'we' or 'us' shall mean Tool Hire Taranaki Limited, our successors and assigns or any person acting on behalf of, and with the authority of Tool Hire Taranaki Limited.
- 1.3. 'Client', 'you', or 'your' shall mean the Client hiring the Equipment from us, or any person acting on behalf of you (including authorised agents).
- 1.4. 'Price' means the Price payable for the Hire of Equipment as agreed between you and us.
- 1.5. 'Equipment' shall mean all Equipment (including any accessories) supplied on Hire to you (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to Hire, or any other documentation provided to you.
- 1.6. 'Agreement' shall mean these Terms & Conditions, as may be amended from time to time (including any orders, Hire of Equipment or schedules as applicable).
- 1.7. 'Amounts Owed' shall mean any amount owed to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses we incur in seeking payment of any Amounts Owed.
- 1.8. 'Business Day' shall mean Monday to Friday, excluding public holidays in New Plymouth, New Zealand.
- 1.9. 'Minimum Hire Period' shall mean the Minimum Hire Period as described on the invoices, quotation, authority to Hire, or any other forms as provided to you.
- 1.10. 'Wet Hire' shall mean that the Equipment is Hired with an operator who shall at all times remain our employee.
- 1.11. 'Confidential Information' shall mean all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, this Agreement, the Hire of Equipment (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information which would itself be Confidential Information.
- 1.12. 'Insolvency Event' shall mean an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.13. 'Personnel' shall mean directors, officers, employees, agents and contractors.
- 1.14. 'CCLA' shall mean the Contract and Commercial Law Act 2017.
- 1.15. 'PPSA' shall mean the Personal Property Securities Act 1999.
- 1.16. 'Regulator' shall mean any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or services.
- 1.17. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.
- 1.18. 'Security Agreement' and 'Security Interest' have the meaning given to them in Part 2, section 16 and 17 of the PPSA.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance and we may (in our sole discretion) accept an order in whole or in part, by issuing an invoice in respect of Equipment Hired, delivering the Equipment or otherwise confirming the order in writing.
- 3.2. We are under no obligation to enquire as to the authority of any person placing an order on your behalf and if you place an order for, or accept any Hire of Equipment from us, then you are taken to accept this Agreement and are immediately bound jointly and severally (including if you are part of a trust in which case you shall be bound in your capacity as a trustee), and such consent and acceptance to this Agreement shall continue to all future orders, Hire of Equipment or schedules (as applicable).
- 3.3. This Agreement may only be amended with our written consent and shall supersede any other document or other agreement between you and us.
- 3.4. Electronic signatures shall be deemed to be accepted by both you and us (provided that both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA).

4. AUTHORISED AGENTS

- 4.1. We are under no obligation to enquire as to the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that the agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You shall give us no less than fourteen (14) days written notice prior to any change in your details (including but not limited to, changes in ownership of the company, name, address, email, contact phone or business structure).
- 5.2. Should you fail to notify us of any change in your details, you acknowledge and expressly agree that:
 - (a) you will be in breach of this Agreement for failing to provide fourteen (14) days prior written notice of any change in your details in accordance with clause 5.1; and
 - (b) you shall be liable for any expenses or loss of profit we suffer as a result of you failing to notify us of any such changes (including any Related Company).

6. PRICE AND PAYMENT

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you in accordance with this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. The Price shall be either:
 - (a) indicated on invoices provided to you in respect of Equipment supplied;
 - (b) our current Price, according to our current Price list; or
 - (c) our quoted Price which shall be binding, provided that you shall accept our quotation in writing within thirty (30) days.
- 6.3. We reserve the right to change the Price in the event of a variation to any quotation (including, but not limited to, any variation as a result of additional services required due to unforeseen circumstances such as availability of Equipment, delays in transportation or as a result of any increase to us in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance expenses).
- 6.4. You shall be required to respond to any variation that we submit within seven (7) working days. Failure to do so will be deemed acceptance to the variation.
- 6.5. At our sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Agreement, which shall be refunded to you within thirty (30) days from the return of the Equipment, provided that you have complied with all obligations during the Hire Period. The deposit may be used to offset any applicable charges payable in respect of the Equipment's repair or maintenance.
- 6.6. Time for payment for the Hire of Equipment is of the essence, the Price will be payable on the dates we determine, which may be:
 - (a) on delivery of the Equipment;
 - (b) by way of instalments in accordance with our payment schedule;
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to your address or address for notices;
 - (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 you.
- 6.7. Payment may be made by cash, electronic/on-line banking or credit card.
- 6.8. All credit card payments will incur a two point five percent (2.5%) additional charge.
- 6.9. You shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to you to us nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10. Receipt of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured or cleared.

7. HIRE PERIOD

- 7.1. All Hire Charges are for the minimum time for the applicable Equipment.
- 7.2. Hire Charges shall commence from the time the Equipment departs from our premises and will continue until the return of the Equipment to the same premises, or until the expiry of the Minimum Hire Period (whichever occurs last).
- 7.3. The date upon which you advise of termination shall in all cases be treated as a full day's Hire.
- 7.4. It is agreed by both parties that:
 - (a) any return of Equipment to our premises must be completed during our regular business hours and while our staff are present; and
 - (b) in the event the Equipment is not returned to us by the end of the specified Hire period, you will be charged at our current daily rate until the Equipment is returned.
- 7.5. No allowance can be made for time during which the Equipment is not used for any reason unless we confirm special prior arrangements in writing. In the event of any Equipment malfunction (provided you notify us immediately), Hire Charges will not be payable during the time the Equipment is not working (unless the malfunction is due to negligence or misuse on your part or is attributable to your actions).
- 7.6. None of the Equipment shall be sublet or cross-hired, and you agree not to assign or transfer your interest in this Agreement or part with possession of all or any component of the Equipment without our prior written consent (which may be withheld at our sole discretion).
- 7.7. Should the Hire of the Equipment exceed a twelve (12) month Hire Period (or a six (6) month Hire Period with the right of renewal), clause 20 shall apply and will constitute a Security Agreement in the form of a lease for a term of more than one (1) year (as defined in Part 2, section 16 of the PPSA). You agree that we may register a security interest as a Purchase Money Security Interest (PMSI) over the Equipment supplied (the collateral).
- 7.8. We reserve the absolute right to immediately repossess the Equipment at any time before or during the Hire Period, without reason, without prior notice, without paying compensation to you and without prejudice to any other rights which we may have under this Agreement and shall refund you any money already paid to us (less any Amounts Owed up to the time of repossession). We (or our agents) may enter any property or premises in accordance with clause 18.2, where the Equipment may be kept for this purpose, and we will not be liable to you for any loss or damage you suffer because we have exercised our rights under clause 16.
- 7.9. In addition to clause 16.10, we shall be entitled to cancel this Agreement if we reasonably believe:
 - (a) that a third party may attempt to take possession of the Equipment; or
 - (b) the Equipment is at risk in any way.

8. RESPONSIBILITIES DURING HIRE

- 8.1. Unless otherwise specified, you agree to:
 - (a) maintain the Equipment as we require (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
 - (b) notify us immediately by phone explaining the full circumstances of any mechanical breakdown or accident in connection with the Equipment. You are not absolved from the requirements to safeguard the Equipment;
 - (c) satisfy yourself prior to taking delivery of the Equipment that the Equipment is suitable for your purposes;
 - (d) operate the Equipment safely in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by us or posted on the Equipment;
 - (e) ensure that all persons operating or utilising the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency or are fully licensed;
 - (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (g) keep the Equipment in their own possession and control. Further you shall employ the Equipment solely in your own work and not permit the Equipment or any part thereof to be used by any other party for any other work;
 - (h) not alter or make any additions to the Equipment, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (i) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (j) deliver the Equipment complete with all parts and accessories clean and in good order as delivered on termination of the Hire; and
 - (k) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment.
- 8.2. Immediately on request, you will pay to us:
 - (a) the new list Price of any Equipment that is for whatever reason destroyed, written off, or not returned to us;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list Price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of you or your agent;
 - (e) the cost of repairing any damage to the Equipment other than by the ordinary use of the Equipment;
 - (f) any lost Hire fees we would have otherwise been entitled to for the Equipment, under this, or any other Hire Agreement;
 - (g) the cost of fuels and consumables used that are we provide; and
 - (h) any insurance excess payable in relation to a claim made by either you or us in relation to any damage caused by, or to, the Hire Equipment whilst the same is Hired by you and irrespective of whether charged by your insurer or ours.
- 8.3. In the event of Wet Hire, the operator of the Equipment remains an employee of us and operates the Equipment in accordance with your instructions. We shall not be liable for any actions of the operator in following your instructions.

9. DELIVERY

- 9.1. We will deliver the Equipment to the delivery location that we each agree to in writing and if the delivery location is at your premises (subject to clause 20), you will provide us and our Personnel with suitable access to the premises, together with any amenities we reasonably require to perform delivery of the Equipment.
- 9.2. Delivery of the Equipment is taken to occur at the time that:
 - (a) you or your nominated carrier takes possession of the Equipment at our address; or
 - (b) we (or our nominated carrier) delivers the Equipment to your nominated address even if you are not present at the address.
- 9.3. At our sole discretion the cost of delivery shall be included in the Price.
- 9.4. We may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid as individual transactions.
- 9.5. Any time we specify for delivery of the Equipment is an estimate only and we shall not be liable for any loss or damage you incur as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be delivered at the time and place as was arranged between both parties.
- 9.6. In the event that we are unable to supply the Equipment as agreed solely due to any action or inaction of you, then we shall be entitled to charge a reasonable fee for redelivery and/or storage of any Equipment (if applicable).

10. DEFECTS

- 10.1. You shall inspect the Equipment on delivery and shall within twenty-four (24) hours notify us of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. You shall afford us an opportunity to inspect the Equipment within a reasonable timeframe following delivery if you believe the Equipment is defective in any way.
- 10.2. If you fail to comply with clause 10.1, the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which we have agreed in writing that you are entitled to reject, our liability is limited to replacing the Equipment.

11. CANCELLATION

- 11.1. Either party may cancel the Services provided under this Agreement if:
 - (a) any provision of this Agreement authorises cancellation in the circumstances;
 - (b) either party have a right to cancel this Agreement under Part 2, subpart 3 of the CCLA (or any other statute); or
 - (c) either party have permanently abandoned the Hire Services before completion or has become incapable of complying with the obligations under this Agreement.
- 11.2. If you cancel this Agreement, you agree that we are entitled to charge for any reasonable loss of profit and without prejudice to our other rights and remedies, we may forfeit your deposit or any amount paid in advance and apply it to any Amounts Owed.
- 11.3. If either party cancels this Agreement, the cancellation shall take effect on the service of a notice on the other party (in accordance with clause 25.7) advising of the cancellation and the reason for the cancellation.
- 11.4. If either party exercises a right to cancel this Agreement:

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- (a) you shall pay us for the Equipment hired up to the date of cancellation, and if the amount owed for the Materials or Services is not apparent from the provisions of this Agreement, it shall be calculated as if the relevant Materials and Services were provided as a variation; and
- (b) we shall provide possession of the Services to you (subject to all Amounts Owing being paid in full) and remove from the Worksite all Materials, tools, plant, equipment, and vehicles belonging to us (and our subcontractors).
- 11.5. We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owing to us shall become immediately due if:
- (a) any Amounts Owing to us become overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b) an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors, or a liquidator or similar person is appointed for you or any of your assets.
- 11.6. You may cancel this Agreement if we commit any of the following acts of default and we have not remedied the default within twenty (20) Business Days of receiving written notice of the default, including if we:
- (a) become insolvent or bankrupt, convene a meeting with our creditors or a liquidator or similar person is appointed in respect of our assets;
- (b) have persistently failed to proceed with the Services with reasonable diligence; or
- (c) persistently or wilfully neglected our obligations under this Agreement.
- 11.7. All provisions of this Agreement intended to continue in force beyond cancellation shall continue to bind the parties (in accordance with clause 25.12).
- 11.8. Subject to clause 11.7, on cancellation, each party shall be immediately discharged from any further obligation or liability regarding the Services and this Agreement (without prejudice to any right or remedy arising from either party's prior breach or unlawful act occurring before the cancellation).

12. PRIVACY ACT 2020

- 12.1. You authorise (us and our agents) to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
- (a) exercising our rights or performing our obligations under this Agreement;
- (b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
- (c) monitoring your credit file with credit reporting agencies;
- (d) registering any Security Interest under this Agreement;
- (e) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
- (f) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 12.2. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information we hold, and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 12.3. If the Services are expected to involve sharing any data sets or other personal information, we will enter into a separate data protection agreement with you.
- 12.4. If you do not provide the personal information requested, we may be unable to perform our obligations under this Agreement.

13. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

- 13.1. Nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the Consumer Guarantees Act 1993 (CGA)) under the CGA.
- 13.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are hiring, or hold yourself out as hiring the Equipment in trade:
- (a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
- (b) it is fair and reasonable for the parties to be bound by clause 13.2.
- 13.3. If you are hiring the Equipment for the purpose of utilising the Equipment in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own clients; and
- (b) procure that your clients, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with clients.
- 13.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that, if you are hiring, or hold yourself out as hiring the Equipment in trade:
- (a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
- (b) it is fair and reasonable for the parties to be bound by clause 13.4.
- 13.5. You will indemnify us against any expenses or losses we incur as a result of your breach of clause 13.

14. EVENT OF DEFAULT

- 14.1. Unless waived in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on any outstanding Amounts Owing from the due date of payment until the date the outstanding amount is paid (and interest shall compound monthly at such a rate).
- 14.2. You agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including, without limitation, administration fees, debt collection agency fees, disbursements and full legal costs on a solicitor-client basis).
- 14.3. Should you fail to pay any account, we may withhold the release of any producer statement, certification, or documentation relating to the Services provided until all Amounts Owing are paid in full.
- 14.4. You acknowledge and agree that if you are in default, we may, at our sole discretion:
- (a) appoint a receiver in respect of your assets to take any action necessary to fulfil your obligations to us (including paying all Amounts Owing); and
- (b) charge you any associated costs to complete this process.

15. RETENTION OF TITLE

- 15.1. The Equipment is and will at all times remain our absolute property.
- 15.2. If any Amounts Owing are overdue or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere the Equipment may be stored, to remove any Equipment. We shall not be liable in contract, tort (including negligence) or otherwise for any damages, expenses, or losses you or any third party incur, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of exercising our rights under clause 15.2.
- 15.3. You are not authorised to pledge our credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repair work.

16. SECURITY AND LIEN

- 16.1. Subject to us providing any Equipment, you charge all of your right, title and interest, whether joint or several in any land, real estate or other asset capable of being legally charged with a lien, you own either now or in the future, to secure the performance of all obligations (including but not limited to full payment of all Amounts Owing) under this Agreement.
- 16.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 16 of this Agreement (including but not limited to signing any document on your behalf).
- 16.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 16 to secure the performance of your obligations to us under this Agreement.
- 16.4. In accordance with section 285, 286 and 288 in Part 5, subpart 1 of the CCLA and all other relevant sections in Part 5, subpart 1 and Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any item or property that has been left with us if any Amounts Owing are outstanding.
- 16.5. It is fair and reasonable for the parties to be bound by clause 16.

17. PERSONAL PROPERTY SECURITIES ACT 1999

- 17.1. This Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Equipment Hired and the proceeds of such Hire of Equipment, to secure the payment to us, of all Amounts Owing and a Security Interest is taken in all Hired Equipment (all present and after acquired personal property), in regard to your account, which is a monetary obligation of you to us for services previously provided and that will be provided in the future.
- 17.2. You agree that you will:
- (a) sign any further document and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Equipment and/or a Security Interest in the proceeds of all Hire of Equipment (a Security Interest taken in all collateral and any proceeds of any collateral).
- (b) give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change in your name and/or any other changes in your details (including but not limited to, changes in ownership of the company, address, email, contact phone or business structure) in accordance with clause 5.1.

- 17.3. To the extent permitted by law, we each contract out of:
 (a) sections 114(1)(a), 133 and 134 of the PPSA; and
 (b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 17.4. Nothing in this Agreement is to be construed as an agreement that a Security Interest in Equipment (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; a Security Interest in all after acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 17.5. You waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.
- 17.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 17.7. You must provide us with information and any associated documentation we reasonably request from time to time relating to your financial status.
- 17.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interest(s) as security for the Amounts Owed and we may suspend or cancel further supply of Equipment to you until you have provided such Security Interest(s).
- 17.9. Any actions taken under clause 17 shall be unconditionally ratified.

18. RISK

- 18.1. You shall ensure that we have clear and free access to the site at all times to enable us to deliver the Equipment. We shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, concrete and grassed areas) unless due to our negligence.
- 18.2. It is your responsibility to ensure that access is suitable to accept the weight of laden trucks, front end loaders or Equipment we deem necessary.
- 18.3. We retain all ownership rights in the Equipment, notwithstanding all risk for the Equipment passes to you on delivery.
- 18.4. You accept full responsibility for the safekeeping of the Equipment and indemnify us of all loss, theft or damage to the Equipment in any circumstances.
- 18.5. You will insure (or self-insure) the Equipment and will engage adequate Public Liability insurance covering any loss, damage or injury arising out of the Hire of Equipment. Further you will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 18.6. You accept full responsibility for and shall indemnify us against all liability in respect of any actions, proceedings, claims, damages, costs and expenses in respect of any injury or damage to property arising out of the use of the Equipment during the Hire Period, whether or not arising from any negligence, failure or omission of you or any other person.

19. NOTIFICATION OF SERVICES

- 19.1. You must precisely locate all unseen or underground services at the Worksite and mark the same prior to us commencing any of the Services (including electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the Worksite). You agree that we are in no way liable for any repair costs or fines incurred due to damage to underground services that you do not precisely locate and mark prior to the commencement of the Services.
- 19.2. We accept no liability for unforeseen or unmarked underground services at the Worksite. If underground services are damaged despite us taking all reasonable steps to identify the underground services present, all liability and repair costs shall be your responsibility (including the obligation to seek damages from the party who installed and failed to mark the correct location of the services). Any additional Services required due to damage to underground services will be treated as a variation unless due to our negligence.

20. HEALTH AND SAFETY AT WORK ACT 2015

- 20.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act, as well as all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 20.2. You must notify us of any known hazards arising from your premises to which any person may be exposed to, as well as notify us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 20.3. Each party must consult, cooperate with and coordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Equipment (including in connection with the delivery of the Equipment).

21. CONSTRUCTION CONTRACTS ACT 2002

- 21.1. We reserve the right to suspend the Services (in accordance with Part 2, subpart 4 of the CCA) by providing five days written notice if:
 (a) a claimed amount is not paid in full by the due date;
 (b) if we have issued a payment claim and no payment schedule has been provided; or
 (c) a scheduled amount is not paid in full by the due date for its payment, even though the payment schedule you provide indicates a scheduled amount that you propose to pay us.
- 21.2. If we suspend the Services under clause 27.1, you acknowledge and agree that:
 (a) the suspension of the Services is not in breach of this Agreement;
 (b) the rights and obligations in this Agreement shall remain in full force and effect;
 (c) we are not liable for any loss or damage you suffer (or by any third party claiming through you);
 (d) we are entitled to an extension of time to complete the Services;
 (e) the suspension does not affect any rights that would otherwise have been available to us under Part 2, subpart 3 of the CCA; and
 (f) we may exercise any rights for payments or adjudication of disputes under Part 2 and Part 3 of the CCA.

22. TRUSTS

- 22.1. If you at any time upon or subsequent to entering in to the Agreement are acting in the capacity of trustee of any trust then whether or not we may have notice of the trust, you expressly agree that:
 (a) the Agreement extends to all rights of indemnity which you now or subsequently may have against the trust and the trust fund; and
 (b) you have full and complete power and authority under the trust to enter into this Agreement and the rights of the trust do not purport to exclude or take away the right of indemnity of you against the trust or the trust fund. You will not release the right of indemnity or commit any breach of trust or be a party to any other action which might affect that right of indemnity.
- 22.2. You will not without consent in writing from us, cause or permit any of the following events:
 (a) the removal, replacement or retirement of you as trustee of the trust;
 (b) any alteration to or variation of the terms of the trust;
 (c) any advancement or distribution of capital of the trust; and
 (d) any change to the trust's property.

23. THIRD PARTY SUPPLIERS

- 23.1. If you request and authorise us to arrange the supply of Equipment or services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our services in arranging such supply, provided that we exclude all liability in connection with the supply of Equipment or services to you directly by a third party supplier. You agree to pay all Amounts Owed in accordance with this Agreement in the event we arrange any supply of Equipment or services that are provided directly to you by a third party supplier.

24. LIABILITY

- 24.1. We shall have no liability whatsoever to you for any indirect expense or loss of profit you suffer arising out of a breach of this Agreement.
- 24.2. You shall not cancel any contract with us or sue for damages arising out of any unintentional misrepresentation made to you in regard to any Hire of Equipment.
- 24.3. Our liability shall be limited to damages which under no circumstances shall exceed the Price of the Hire costs you incur.
- 24.4. To the extent permitted by law, our total liability under or in connection with this Agreement and the Hire of Equipment is limited to, at our option: (i) supplying the Equipment again; or (ii) the payment of the expense of having the Equipment supplied again.
- 24.5. If, notwithstanding clause 23, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
 (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid to us for the applicable Hire of Equipment; or (ii) the actual loss or damage you suffer; and
 (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, clients, opportunities or loss of or damage to reputation.
- 24.6. The limitations and exclusions on liability in this clause 24 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.

24.7. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:

- (a) for the acts or omissions of any third party;
- (b) any act or omissions performance in accordance with your instructions (or instructions from your agents); or
- (c) to any third party.

25. GENERAL

- 25.1. Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of New Zealand. You further agree that any court proceedings will be held at the New Plymouth district court.
- 25.2. Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 25.3. Priority: To the extent of an inconsistency between:
- (a) this Agreement;
 - (b) all other schedules to this Agreement;
 - (c) any privacy or data agreement (if applicable); and
 - (d) the order of priority set out above will apply (with (a) having the highest priority).
- 25.4. Sub-contracting: We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 25.5. Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld in our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owed to us.
- 25.6. Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws in which case we can give you notice of any such amendments required and you will be bound by the same.
- 25.7. Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the senders email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 25.8. Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 25.9. Severability: If any part of this Agreement is illegal or unenforceable, it will be severed and all remaining rights in this Agreement will continue in full force and effect.
- 25.10. Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 25.11. Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive cancellation of this Agreement by either party.
- 25.12. Rights of third parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 25.13. Relationship: We will Hire Equipment to you as an independent Contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.
- 25.14. Non-exclusive: This Agreement is not exclusive and you agree that there are no restrictions on us to provide any Equipment on Hire to any other person.
- 25.15. Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or by email exchange of pdf copies) which together will constitute the one instrument.