

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. "Supplier," "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 representatives).
- 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 by us (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 by us.
- 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 Owing" shall mean any amount owed by you to us, from time to time, including the Price, any interest payable by you, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 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 by us.
- 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. YOUR AUTHORISED REPRESENTATIVES

- 4.1. Should you introduce any third party to us as your authorised representative, that representative shall have the full authority of you to Hire any Equipment on your behalf and such authority shall continue until all requested services have been completed or you notify us in writing that said person is no longer your authorised representative.
- 4.2. In the event that your authorised representative is to have only limited authority to act on your behalf, then you must specifically and clearly advise in writing to us, the parameters of the limited authority granted to your authorised representative.
- 4.3. You agree that you will be solely liable for all expenses incurred in providing any Hire of Equipment requested by your authorised representative.

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 suffered by us 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 by us 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 by you 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 by you on the date(s) determined by us, 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 by us.
- 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 by us 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. Unless otherwise specified, the following shall apply:
- (a) a half day Hire is a maximum of five (5) hours;
 - (b) a full day's Hire is a maximum of twenty four (24) hours;
 - (c) overnight Hire is from 4:00pm – 8:00am the following day and is charged at the half day Hire rate; and
 - (d) weekly and/or monthly Hire Periods and rates will be at the agreement of both parties.
- 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, and/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. No allowance can be made for time during which the Equipment is not in use for any reason, unless we confirm special prior arrangements in writing. In the event of an Equipment breakdown (provided you notify us immediately) hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of, or attributable to you.

8. RESPONSIBILITIES DURING HIRE

- 8.1. Unless otherwise specified, you agree to:
- (a) maintain the Equipment as is required by us (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 by you;
 - (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 by you that are provided by us; 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 reasonably required by us or our Personnel 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 specified by us for delivery of the Equipment is an estimate only and we shall not be liable for any loss or damage incurred by you 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. Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under this Agreement, we may suspend or terminate the supply of Equipment on Hire to you. We will not be liable to you for any loss or damage you suffer because we have exercised our right under this clause 11.
- 11.2. We may cancel this Agreement or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice we shall repay to you any sums paid. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3. In the event that you cancel this Agreement then you shall be liable for any loss incurred by us (including, but not limited to any loss of profits) up to the time of cancellation or as a direct result of 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, in accordance with clause 12 for the following purposes:
- (a) assessing creditworthiness and exercising our rights and/or performing our obligations under this Agreement;
 - (b) 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;
 - (c) using the services of credit reporting and debt collection agencies and you consent to us disclosing personal information (including any information about default and repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - (d) registering any Security Interest under this Agreement; and
 - (e) 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. Clause 12.1 is authority and consent from you in accordance with sections in Part 3, Part 7, subpart 1 and all other relevant sections in the Privacy Act 2020.
- 12.3. You (if you are an individual) have the right under 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 held by us 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.
- 12.4. Each party must keep confidential all Confidential Information, however nothing in clause 12 prevents a party from disclosing Confidential Information:
- (a) in circumstances expressly provided for in this Agreement;
 - (b) if disclosure is required by law, or Regulator (but only to the extent required); or

(c) if disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.

- 12.5. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 12.6. If the Hire of Equipment involves the sharing of any data sets, or other personal information, to you by us, or us to you, we will enter into a separate data protection agreement with you.
- 12.7. If you do not provide personal information requested by us, we may not be able 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 incurred by us as a result of your breach of clause 13.

14. DEFAULT IN PAYMENT

- 14.1. You agree to reimburse us for any expenses we incur in recovering any Amounts Owing (including but not limited to, administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis), and unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid.

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 incurred by you or any third party, 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, owned by you 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 by you for repair or any other services 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 by you 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 reasonably requested by us 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 Owing 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 by us under clause 17 shall be unconditionally ratified by you.

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 as may be deemed necessary by us.
- 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 advise and precisely locate all unseen or underground services on the worksite and clearly mark the same prior to us delivering Equipment (including but not limited to, electrical services, gas services, sewer services, water mains, telephone cables, fibre optic cables, or any other services that may be present on the worksite).
- 19.2. You agree that we are in no way liable for any damages, expenses or fines that you suffer as a result of services not being precisely located and notified by you in accordance with clause 19.1.

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. If you are a "residential occupier" (as defined in Part 1, section 5 of the Construction Contracts Act 2002 (CCA)), then you agree that we shall have the right to suspend any Hire of Equipment by providing five (5) days written notice, should a payment claim be served on you and payment is defaulted, in accordance with section 24A in Part 2, subpart 4 of the CCA.
- 21.2. We retain the right to suspend the Hire of Equipment with notice if there is no clear payment schedule supplied by you to us, detailing when payment will be cleared and received.
- 21.3. Should we suspend the Hire of Equipment it shall not be considered a breach of this Agreement and we are not liable for any loss or damage suffered by you.
- 21.4. In the event the Hire of Equipment is suspended you agree that:
- (a) we retain the right to cancel this Agreement whilst the Hire of Equipment is suspended and all other rights available to us in this Agreement shall remain in full force and effect; and

(b) 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 Owing 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 suffered by you arising out of a breach by us 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 by us 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 by you to us for the applicable Hire of Equipment; or (ii) the actual loss or damage suffered by you; 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 representatives); 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 Owing by you 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.