

Alpha Equipment Rental & Sales LP – Terms and Conditions of Trade

- Definitions**
- "Supplier" shall mean Alpha Equipment Rental & Sales LP its successors and assigns or any person acting on behalf of and with the authority of Alpha Equipment Rental & Sales LP.
- "Client" means the person having possession of the Equipment (and/or purchasing the Equipment) or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation; and
(a) if there is more than one Client, it is a reference to each Client jointly and severally; and
(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Client's executors, administrators and permitted assigns;
- "Equipment" means all Equipment supplied either by sale or hire to the Client by the Supplier, at the Client's request from time to time; and
(a) includes any erection, dismantling and transport of the Equipment ("Services"); any parts, accessories and/or consumables supplied by the Supplier to the Client either separately or deposited incidentally by the Supplier in the course of conducting, or supplying to the Client, the Equipment; and
(b) where the context so permits the terms Equipment or Services shall be interchangeable for the other;
- "Minimum Hire Period" means the Minimum Hire Period as described in this Contract, on the invoice, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- Damage Waiver Fees means the cost paid by the client to limit the liability to the Client, but of the excess amount in the event of a Supplier's insurance being deemed insufficient to cover the Client's liability.
- Damage Waiver Excess means the amount payable to the Supplier for any costs not covered by the Supplier's insurer in the event a claim is made for damage to the Equipment, while on hire or in the possession of the Client, (refer clause 15).
- Consequential Loss means any loss of potential loss incurred by the Supplier in the event that the equipment is not immediately available for hire by the Supplier at the end of the hire period or if the Equipment is returned to the Supplier in a damaged state and is not immediately available for hire (refer clause 8.3).
- "Trade Client" are only those Clients whose the Supplier has agreed to currently intend to trade credit terms.
- Supplier shall maintain the cost of the hire plus any GST (or the hire or purchase of the Equipment as agreed between the Supplier and the Client) subject to clause 7 of this Contract.
- "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, financial, other party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to: "Personal Information" such as names, titles, contact details, D.O.B, occupation, phone numbers, email addresses, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), services credit applications, and other confidential information.
- "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest 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 Client does not wish to allow Cookies to operate in the background when ordering from the Supplier, then the Client shall have the right to disable the Cookies first by selecting the option to enable/disable provided on the website, prior to ordering Goods via the website.
- "Contract" means the terms and conditions contained herein, together with any Price, order, invoice or other document or amendments hereunder to be supplemental to this Contract.
- Acceptance**
- The Client is to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions upon written acceptance from the Client at the time of placing an order or accepting delivery of any part.
- These terms and conditions may not 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 Client and the Supplier.
- Where the Client requesting or organising the Supplier to provide Services is acting on behalf of a 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 Client acknowledges that they shall be liable for the payment of the Charges as if they had contracted the Services on their own behalf.
- Any invoice (including identification, recommendation, information, and/or service provided by the Supplier in relation to Equipment supplied is given in good faith, based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make the Equipment.
- None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the contract, or part with possession of, all or any portion, of the Equipment, without the prior written consent of the Supplier, which may be contractually withheld.
- 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.
- The Supplier is deemed to deliver to the Supplier by returning a fifteen (15) minute cleaning process offered free of charge by the Supplier. Equipment requiring extra cleaning in addition to this process will incur extra costs per hour of additional cleaning required on a pro rata basis.
- An environmental levy is charged at the completion of each hire period as detailed in the hire contract, other charges may also apply (e.g. rental of a generator, if applicable, if applicable).
- The Client acknowledges:
(a) "good working order" means, in respect of the Equipment, that:
(i) the Equipment is in good condition and in good appearance throughout, and
(ii) the Equipment has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.
- The Supplier will:
(a) provide the Equipment in good working order; and
(b) allow the Client exclusive use of the Equipment during the Hire Term unless the equipment is accepted as stood down.
- Trade Hire**
- The Client agrees that in the event they are trading any chattels for replacement Equipment that the chattel is traded in with the same equipment and as good a condition as when the chattel was appraised by the Supplier and warrant that it is the Client's unencumbered property.
- Errors & Omissions**
- The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual errors (and/or omissions):
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or
(b) contained/informed from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- 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 the Supplier, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- Authorized Representatives**
- Unless otherwise stated as per clause 5.2, the Client agrees that should the Client introduce any third party to the Supplier as the Client's authorised representative, that once introduced that person shall have the full authority of the Client to order any Equipment, and/or to request any variation to the contract (such authority to continue until all requested Equipment has been returned by the Supplier, or if the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).
- In the event that the Client's duly authorised representative as per clause 5.1 is to have any limited authority to act on the Client's behalf, the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier as a result of the Supplier's any reasonable enquiries or enquiries thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (i) (any)).
- Change in Control**
- The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, and contact phone numbers, directors, changes in business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- Charges and Payment**
- At the time of placing the hire Charges shall be set at:
(a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied; or
(b) the Charges as at the date of delivery of the Equipment according to the Supplier's current Charges list; or
(c) the Supplier's quoted Charges (subject to clause 7.3) which is subject to a site inspection, and shall be binding upon the Client provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.
- The Supplier reserves the right to change the Hire Charges:
(a) if a variation to the Equipment which is to be supplied is requested; or
(b) where additional Services are required due to the discovery of hidden or identifiable difficulties (including, but not limited to, poor weather conditions, inclement or unclear Client instructions, limitations to accessing the site, availability of Equipment, safety considerations etc) which are only discovered on commencement of the Services;
(c) in the event of increases to the Supplier in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond the Supplier's control.
- Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variations to the Charges. Payment for all variations must be made in full at the time of their completion.
- At the Supplier's sole discretion, a deposit may be required upon request.
- Time for payment for the hire of the Equipment being of the essence, the Charges will be payable by the Client on the date determined by the Supplier, which may be:
(a) by way of instalments/progress payments in accordance with the Supplier's payment schedule; or
(b) for certain approved contracts, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) falling any day to the contrary, or date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- With respect to "Non Trade Client" the time for payment shall be made on the date when the Equipment is returned, or within seven (7) days of any 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.
- Payment will be made by electronic banking, credit card (plus a surcharge may apply per transaction) or by any other method as agreed between the Client and the Supplier.
- The Supplier will keep the Client's personal details, including credit card details in accordance with the guidelines set out in the Alpha Equipment Rental & Sales LP Privacy Policy.
- The Client expressly agrees that the Supplier is entitled to immediately charge the Client's nominated credit card for all outstanding amounts owing 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 Client pursuant to the terms of this Agreement, should the Client have:
(a) any unpaid charges;
(b) other amounts due and outstanding by the Client; or
(c) any Equipment for any other party supplied on hire that is lost or damaged; and
(d) any other additional charges that may be incurred by the Client, which were not known at the time of the return of the Equipment.
- The Client shall not be entitled to set off any amount, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- The Client acknowledges and agrees that the Client's obligations to the Supplier for the supply of Equipment on hire shall not cease until:
(a) the Client has paid the Supplier all amounts owing to the Supplier; and
(b) the Client has met all other obligations due to the Supplier in respect of all contracts between the Supplier and the Client.
- Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until the form of payment has been honoured, cleared or accepted and until then the Supplier's ownership or rights in respect of this contract shall continue.
- Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to the Supplier an amount equal to any GST the Supplier may be required to pay for any supply by the Supplier under this or any other contract of the Equipment on hire. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- Damage Waiver**
- The Hire charge will include a charge for the Damage Waiver.
- The Client shall pay for the damage waiver unless written confirmation of suitable insurance cover is provided to the supplier and such confirmation has been accepted and approved in writing by the Supplier (as the Supplier's sole criterion), prior to the client taking possession of the Equipment. The Client is not entering into a Contract to purchase the Damage Waiver from the Supplier by paying the damage waiver.
- Subject to receipt by the Supplier of the Damage Waiver Excess and acceptance of any insurance claim (refer clause 15) by the Supplier's insurer, the Client will then only be liable for any Consequential Loss costs (refer clause 8.3).
- For additional clarification, clause 8.3 will only apply in the event of the Supplier's insurance claim being wholly accepted by the insurer.
- Consequential Loss**
- In the event that the Equipment is damaged or not able to be made available for hire because of the actions of the Client while hire in possession of the Equipment while on hire to the Client, the Supplier is able to charge the Client for the consequential loss arising until the Equipment is either repaired or replaced and made available for hire.
- Charges for consequential loss shall be calculated based on the time taken to repair or replace the equipment in accordance with standard hire rates (refer clause 11).
- Consequential loss is deemed to include any recovery/transport costs or any statutory costs (e.g. government fines) incurred by the Supplier.
- Consequential Loss does not apply to any costs of routine or scheduled maintenance or any delays arising from the inability of the Supplier to have the work completed in a timely manner.
- Provision of the Services**
- Delivery of the Equipment and/or Services ("Delivery") is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Equipment and/or Services to the Client's nominated address, even if the Client is not present at that address. In the event the Client (or a representative thereof) is not present at the time of delivery, the Supplier's delivery docket remains prima facie evidence of such delivery.
- Return of the Equipment ("Return") will be completed when the Equipment has been accepted by the Supplier by their off-hire notice. Where the Equipment is inspected by the Supplier at the time of return, the Client shall be deemed to have accepted the off-hire notice issued to the Client 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 Client collects the Equipment, it will be checked on arrival in the Supplier's yard for quantity and condition. In both cases the check in the Supplier's yard for quantity and condition will be the only legal proof of the quantity and condition of Equipment returned.
- The cost of Delivery is in addition to the Hire Charges, unless otherwise specified by the Supplier.
- The Supplier 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.
- Any time specified by the Supplier for Delivery is an estimate only and the Supplier will not be liable for any loss or damage incurred by a party other than as set below in any event.
- Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Equipment as agreed solely due to any action or reaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Equipment to the Client.
- The Supplier shall not be responsible for delay or non-completion of the job for which the Equipment are purchased/rented resulting from an authorised the reasonable control of the Supplier, including but not limited to, industrial action, strikes, pandemics, lockouts, epidemics, fire, war, government actions, or other circumstances beyond the control of the Supplier.
- The Client shall ensure that the Supplier has clear and free access to the nominated address at all times to enable them to make Delivery. The Supplier shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concrete) and/or paved or grassed areas or enforcing Client instruction), unless due to the negligence of the Supplier.
- Use, Operation and Maintenance of the Equipment**
- Hire Period:**
(a) The Hire Period shall:
(i) commence from the time the Equipment depart from the Supplier's premises, and will continue until the return of the Equipment to the Supplier's premises, and until the expiry of the Minimum Hire Period, whichever last occurs, unless by other arrangement with the Supplier that has been confirmed in writing. Additional charges will apply in the event that the Client requests an extension of the Hire Period;
(ii) be based on a standard daily rate of hire on a weekly (being five (5) working day) cycle.
(b) the cost of sales and consumables provided by the Supplier shall be paid by the Client.
(c) no date upon which the Client advised of termination (other than of the hire period, the Supplier must be notified by 9.00am of the initial off-hire date in writing, and the Client must give 14 days written notice to the Supplier.
(d) no allowance whatever can be made for time during which the Equipment are not in use and, unless the Supplier confirms special prior arrangements in writing in the event of breakdown of the Equipment, provided the Client notifies the Supplier immediately, hire charges will not be payable during the time the Equipment is not functional, unless the condition is due to negligence or misuse on the part of attributable to the Client.
- Client's Obligations:
(a) All Client's obligations under this Contract are subject to the following:
(i) satisfy itself on Delivery that the Equipment are suitable for its purposes;
(ii) maintain the Equipment as is required by the Supplier;
(iii) notify the Supplier immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or fire, and in connection with the Equipment, the Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
(iv) use the Equipment safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to the use of the equipment) and in accordance with any written or printed use and maintenance instructions, and in accordance with any manufacturer's instructions, whether supplied by the Supplier or posted on the Equipment;
(v) ensure the security and safekeeping of the Equipment whilst being used, and that all persons who use the Equipment are instructed and qualified to use the Equipment as required by current Occupational Safety and Health Guidelines;
(vi) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to taken, let, grant or any other encumbrance over the Equipment. This does not prevent the employees of the Client from using the Equipment;
(vii) make any safe additions to the Equipment (including, but without limitation, altering, making any additions to, defacing or altering any identifying mark, plate or number on the Equipment), or in any other manner interfere with the equipment, as doing so may undermine the structure and safety of the Equipment. The Supplier will photograph, in detail, the Equipment once erected as part of the hire process;
(viii) employ the Equipment solely in their own work and not permit the Equipment (or any part thereof) to be used by any other party for any other work;
(ix) not exceed the recommended or legal load and capacity limits of the Equipment;
(x) not use or place any illegal, prohibited or dangerous substance on the Equipment;
(xi) not let the Equipment (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold;
(xii) on termination of the hire, deliver up the Equipment, complete with all parts and accessories, clean and in good order, as delivered, in the same state and condition as when received, in the same place and at the same time as when received, and that there are any issues raised that do not comply with the Supplier's checklist (including but not limited to, environmental levy where cleaning was required and disposal of spoil is necessary etc).
- Intentionally or negligently by the Supplier the Client may:
(i) be liable on the Charges for any equipment (or any part thereof) that is, for whatever reason, destroyed, irreparable, or not returned to the Supplier's all costs incurred in cleaning the Equipment (including removing plaster, mortar, cement and/or concrete from the Equipment), if the Equipment are damaged by the Supplier (at their sole discretion) to be accessively dirty;
(ii) if it is not repaired or replaced by the Client, the Client shall not assign the benefit of the hire contract nor be entitled to take, let, grant or any other encumbrance over the Equipment up to an amount equal to 10% of the new list Charges of the Equipment, unless:
(a) caused by the negligence of the Client or the Client's agent; or
(b) otherwise due to the Supplier's reasonable option in any way whatsoever other than by the ordinary use of the Equipment by the Client;
(iii) if any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire contract.
- 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 9 apply, and this contract a security agreement for the purposes of PPSA generally, and in particular Section 26.
- No warranty is given by the Supplier as to the quality or suitability of the Equipment for any purpose, and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless the Supplier in respect of all claims arising out of the use of the Equipment.
- Standard notices must be received by the Supplier before 8am of the initial Standard Day.
(a) There is no Standdown available on attachments and equipment that are not GPS equipped.
(b) The Client may only apply for Standdown if the equipment is available to be returned or collected by the Supplier, any freight charges incurred will be charged to the Client.
(c) Standdown time of 50% may apply subject to the equipment being made available to the Supplier for rehire.
(d) A Standdown rate of 100% is only applicable in the circumstance of breakdown/mechanical faults, a public holiday or circumstances of extreme weather.
(e) Standdown equipment on rent-to-purchase agreements is not applicable for Standdown.
(f) Please note that equipment not used to carry out any on their GPS, if the Supplier discovers that the equipment has been used, the Supplier reserves the right to void the Standdown period.
- Inspection of Equipment**
- The Client hereby grants the Supplier (including its employees, duly authorised agents or representatives) the right, at all times, upon the Supplier giving to the Client reasonable notice and without undue interference with the Client's business or operations, to:
(a) inspect the equipment, whether 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 of the Equipment by the Client; and
(d) do any act, matter or thing which may be required by law or to otherwise protect the Supplier's rights or interests in the Equipment.
- Liens to Own**
- Upon the end of the Hire Period, provided the Client has made full payment of all monies payable and fulfilled their obligations under this agreement, the Client may enter into a separate agreement to acquire ownership of the Equipment by payment to the Supplier of the stipulated amount, and in such case (leads to goods, delivery, risk, returns and warranty) shall be applicable.
- Title**
- Where this is a hire contract:
(a) the Equipment is and will at all times remain the absolute property of the Supplier, however the Client accepts full responsibility for:
(i) the safekeeping of the Equipment for the full hire period; and
(ii) the damage to the Equipment however 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 Client;
(b) shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in relation to 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 Client or any other persons.
- The Client's insurance, or equivalent to the extent of the Client's insurance against physical loss or damage including, but not limited to, the theft of accident, fire, theft, and burglary and all other risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment, and called upon the Client, shall produce evidence of such insurance to the Supplier. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurance claim to be made against the Client.
- The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- Where is this a contract for the purchase of the Equipment:
(a) the Supplier and the Client agree that ownership of the Equipment shall not pass until:
(i) the Client has paid the Supplier all amounts owing to the Supplier; and
(ii) the Client has met all of its other obligations to the Supplier;
(b) it is otherwise agreed that:
(i) ownership of the Equipment passes to the Client in accordance with clause (a) that the Client is only a bailee of the Equipment and must return the Equipment to the Supplier on request;
(ii) the Client holds the Equipment in trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Equipment being lost, damaged or destroyed;
(iii) the Client must not sell, dispose, or otherwise part with possession of the Equipment other than in the ordinary course of business and/or market value; if the Client sells, disposes or parts with possession of the Equipment then the Client must hold the proceeds of any such sale on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
(iv) the Client should not convert or possess the Equipment or interfere with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Client;
(v) the Supplier may recover possession of any Equipment in transit whether or not delivery has occurred;
(vi) the Client shall not charge or grant an encumbrance over the Equipment nor grant nor otherwise give away any interest in the Equipment.
- The Supplier may commence proceedings to recover the Charges of the Equipment sold notwithstanding that ownership of the Equipment has not passed to the Client. If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent (as the trustee of the Client) will enter upon the land and premises owned, occupied or used by the Client, or any premises where the Equipment is stored and take possession of the Equipment.
- Insurance**
- The Client hires the Equipment at the Client's own risk and indemnifies the Supplier against any and all loss in respect of or damage to the Equipment, including any Consequential Loss.
- Damage Waiver is not insurance, but is an agreement by the Supplier that the Client's liability for damage to the Equipment can be limited under clause 15.6 (a) to the extent of the Client's liability for the value of Equipment (or part thereof) that is lost, stolen or damaged in any contract of insurance with the Supplier by paying for the Damage Waiver.
- The Client agrees with the Supplier that the use of Equipment carries with it dangers and risks of injury, and the Client agrees to accept all dangers and risks.
- The Supplier will maintain current insurance policies in respect of the Equipment for its full insurable value.
- The Client agrees that the following exclusions scheduled below (clauses 15.4(a) - 15.6) apply to the Supplier's insurance policies and the Client will:
(a) act at all times with reasonable care;
(b) deliver to the Supplier a detailed report on the events giving rise to the loss and/or damage of the hire Equipment, including the extent of any criminal act, police report and acknowledgement. The report and/or supporting documentation to be received by the Supplier within four (4) hours of the Client becoming aware of the loss or damage; and
(c) undertake such action as the Supplier would have reasonably expected to enable the Supplier to recover such loss from any potentially responsible third parties.
- The Suppliers insurance policies do NOT cover:
(a) theft or crime damage to Equipment unless reasonably secured;
(b) damage or loss due to nuclear, atomic or non-nuclear accident or explosion; or
(c) damage resulting from overloading of electrical and/or motor capacity;
(d) damage to tyres or tubes however caused during the term of the hire;
(e) damage resulting from inadequate use of the Equipment;
(f) damage or loss to any of the accessories forming part of the hire Equipment including but not limited to, tools, electrical cords, grease guns, hoses, welding cables, oxygen and/or acetylene bottles, and pneumatic tools;
(g) damage or loss arising from water (including, but not limited to, partial or full immersion of the Equipment not specifically covered by the Client's insurance);
(h) damage or loss arising from impact and environmental underground affecting the Equipment's condition;
(i) damage or loss arising from breach by the Client of the conditions of the Hire agreement;
(j) damage or loss from use of the Equipment in violation of any State or By-Law.
Special conditions or exclusions may apply additional details of which will be provided by the Supplier prior to the commencement of the hire. A breach of these special conditions will be considered a breach of the Contract.
- The Supplier and Client agree and acknowledge that Section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusion of the first four hours of the Client's liability for the value of Equipment (or part thereof) that is lost, stolen or damaged in any contract of insurance (notwithstanding that clause 15.6 is not a contract of insurance).
- In the event that the Client is provided by the Supplier is the subject of an insurance claim made by the Supplier, as a result of any action or reaction of the Client, the Client shall be liable for the value of Equipment (or part thereof) that is lost, stolen or damaged in any way during the entire term, irrespective of whether the insurance claim is successful.
- Defects**
- The Client shall inspect the Equipment on delivery and shall within fourteen (14) days notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or colour. The Client shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery. If the Client believes the Equipment is defective in any way, the Client shall fail to give the Supplier a written report of the defect, the Supplier shall be presumed to be free from any defect or damage. For defective Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to replacing the Equipment.
- Default and Consequences of Default**
- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- Further to clause 18.1, in the event that the Client is in breach of any term of this contract, if a Client has made payment to the Supplier and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention of the Consumer Credit Act 2013.
- Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier, shall, whether or not due for payment, become immediately payable if:
(a) any money payable to the Supplier becomes overdue, or the Supplier's option the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by the Supplier;
(c) the Client becomes insolvent or bankrupt, commencing a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- Security and Charge**
- In consideration of the Supplier agreeing to supply the Equipment, the Client charges all of its rights, title and interest (whether joint or several) in and/or in all, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the fulfilment of the Client's obligations under this contract, including the Client's obligations under this clause 18.1, to the payment of any monies due. The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney to perform all necessary to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Client's behalf.
- Cancellation**
- Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those noted to payments) under these terms and conditions the Supplier may suspend or terminate the supply of equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- The Supplier reserves the absolute right to:
(a) cancel, terminate, or determine this contract;
(b) refuse to supply equipment to the Client;
(c) at any time, before or during the hire period, without notice, without prior notice, without payment of compensation and without prejudice to any other rights which the Supplier may have against the Client. The Supplier or its agents may enter any property, premises or vehicle where the Client is located, in order to enforce this clause. This purpose allows the collection of any:
(i) in accordance with clause 19.2 in these terms and conditions, the Supplier shall be entitled to cancel the contract if:
(a) the Company reasonably believes that a third party may attempt to take possession of the Equipment; or
(b) the Company is at risk.
- In the event that the Client fails to cancel this contract then the Client agrees to provide a minimum of twenty-two (22) hours notice of termination of hire by either telephone or email. The Client shall remain liable for all hire charges due up to the time of cancellation/stop of hire as noted.
- Privacy Policy**
- All email addresses, images or other recorded information held or used by the Supplier is Personal Information as defined and referred to in the Privacy Act 2014 and is not to be released or otherwise controlled. The Supplier acknowledges its obligation in relation to handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2014 (the "Act") including Part 4 of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in an European Area: "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR" (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information to a third party, in breach of the Act and/or the GDPR (where relevant) and must be approved by the Client by written consent, unobstructed to an operation of law.
- Notwithstanding clause 20.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Client's website. The Supplier agrees to display relevant to such Cookies and/or similar tracking technologies, including cookies, to the Client, and to allow the Client to accept or decline such Cookies. The Client's consent to the use of such cookies is (i) IP address, browser, email address and other similar details;
(ii) Tracking website usage and traffic; and
(iii) Reports are generated and stored when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information").
In order to enable/disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable/disable the Cookies by selecting the option to enable/disable, provided on the website prior to proceeding with a purchase/visit via the Supplier's website.
- The Client acknowledges the Supplier or the Supplier's agent to:
(a) access, collect, retain and use any information about the Client,
(b) including any overall true financial information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; and
(c) for the purpose of marketing products and services to the Client.
- The Client agrees to indemnify the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purpose of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- Where the Client is an individual the Supplier under clause 20.3 are authorises or consents for the purposes of the Privacy Act 2014.
- The Client shall have the right to request the Supplier for a copy of the information about the Client and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.
- Personal Property Securities Act 1999 ("PPSA")**
- Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
(b) the Client's interest is taken in all Equipment previously supplied by the Supplier to the Client (if any) and all Equipment that will be supplied in the future by the Supplier to the Client.
- The Client undertakes to:
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register;
(c) register a financing charge statement on a charge (damaged) without the prior written consent of the Supplier.
- The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- The Client waives its rights as a debtor under sections 116, 120(2), 121, 122, 123, 124, 125, 126, 129, 130 and 132 of the PPSA.
- Unless otherwise agreed in writing by the Supplier, the Client's rights to request a verification statement in accordance with section 148 of the PPSA.
- The Client shall unconditionally ratify any actions taken by the Supplier under clauses 21.1 to 21.5.
- Dispute Resolution**
- All disputes and differences between the Client and the Supplier touching and concerning this contract shall be referred to arbitration under the Arbitration Act 1996. The arbitration shall be conducted by two arbitrators, one to be appointed by each party and the umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
- Compliance with Laws**
- The Client and the Supplier 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 Client's and the Supplier's Health and Safety Policies, and all applicable laws, regulations and any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- The Supplier has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client by any applicable laws, regulations and bylaws of government, local and other public authorities (including the Health and Safety Act) arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Supplier shall not be the person who controls the place of work in terms of the HSW Act.
- The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses and approvals that may be required for the Equipment hire.
- Construction Contract Act 2002**
- The Client hereby expressly acknowledges that:
(a) the Supplier is not liable to support work under five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
(b) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client or
(c) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
(d) the Client has not complied with an adjudicator's notice of that the Client must pay an amount to the Supplier by a particular date; and
(e) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract;
(f) if the Supplier suspends work:
(i) is not in breach of contract; and
(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
(g) the Supplier is entitled to an extension of time to complete the contract; and
(h) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid; and an adjudicator's determination has not been completed with;
(i) if the Supplier exercises its right to suspend work under the Construction Contract Act 2002, the Client shall:
(i) affected any rights that would otherwise have been available to the Supplier under the Contract Remedies Act 1979; or
(ii) the Client shall exercise any rights that may otherwise have been available to the Client under the Contract Remedies Act as a direct consequence of the Supplier suspending work under this provision.
- Force Majeure**
- Subject to clause 25.2, neither party shall be responsible for any delays in Delivery or collection due to causes beyond their control, but not limited to, acts of God, war, terrorism, mobilisation, civil commotion, riots, pandemics, shortages, orders or regulations of government or any related authority, fire, flood, loss of access, lockouts or other labour difficulties, embargoes, of, or inability to obtain shipping space, or land transportation).
- Nothing in clause 25.1 will limit or exclude the Client's responsibility and liability under this contract for Equipment that is lost, stolen and damaged beyond fire and war and during the Hire Term, or lost, broken down, or become unusable to use as a result of the Client's conduct or negligence.
- Limitation of Liability**
- While the Supplier provides the Services in good faith and to the best of its ability, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these Services. The Client agrees to indemnify the Supplier for any and all claims, damages, costs and expenses (including the costs of the Client to enforce the Charges of the Equipment). The Client accepts the Supplier's liability on the basis that the maximum extent permitted by law, any liability of the Supplier for the Services provided under this contract is hereby excluded. This is regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise.
- The Client agrees to indemnify the Supplier, (including its partners, associates or employees) and any other person who may be sought to be made liable in excess of the limit of liability described in clause 26.1 in respect of any activity arising from, or connected with this Contract in respect of any claim of whatsoever kind, that may be made by any person and any costs and expenses that may be incurred by the Supplier.
- General**
- If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, enforceability, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- The 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 of New Zealand.
- The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- The Client cannot licence or assign without the written approval of the Supplier.
- The Supplier may licence and/or assign all or any part of its rights and/or obligations to the Client but shall be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to be taken effect from the date of the Client's acceptance of such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Equipment under this contract.
- 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.
- Terms Specifically Applicable to the Sale of Equipment Only**
- (a) Risk of damage or loss of the Equipment passes to the Client on Delivery and the Client must insure the Equipment on or before Delivery.
(b) If any of the Equipment is damaged or destroyed following Delivery, but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Equipment. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person delivering with the Supplier a copy of this contract.
- If the Client requests the Supplier to leave the Equipment outside the Supplier's premises for collection, or to deliver the Equipment to an unattended location, then such equipment will be left at the Client's sole risk.
- The warranty shall be the current warranty provided by the manufacturer of the Equipment. The Supplier shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Equipment.
(b) In the case of second hand equipment, the Client acknowledges that he/she has had full opportunity to inspect the same and that the Client accepts the same as it is, with all faults and defects, and that the Client is not entitled to any quality or suitability warranty and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss of damage to the Equipment, or caused by the Equipment, or any part thereof however arising.