

## GENERAL TERMS AND CONDITIONS OF HIRE

### 1. DEFINITIONS

In these terms and conditions:

- a. "NZ Access Hire" means the legal entity providing equipment to the Hirer under this Agreement. As between the Hirer and NZ Access Hire, the rights and obligations specified in this Agreement, including without limitation the indemnity and liability provisions, shall be specific and limited to the NZ Access Hire entity providing Equipment to the Hirer.
- b. "NZ Access Hire Group" means the companies, franchises, and other entities associated with the NZ Access Hire brand and/or the franchise, sale, or servicing of Equipment.
- c. "Agreement" means these terms and conditions, together with the Application for Credit.
- d. "Equipment" means the Equipment hired by NZ Access Hire to the Hirer (whether the original equipment or any substitute) and includes all accessories and other equipment of NZ Access Hire attached to the equipment or to be used in connection with it. For the purposes of this Agreement the Equipment shall be deemed to be the property of NZ Access Hire whether such is the fact or not.
- e. "Hirer" means you and includes your successors or Representatives.
- f. "Representative" of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor, or subcontractor of that party.
- g. "Site" means the place where the Equipment is to be used or operated for the purposes of this Agreement (if appropriate).

### 2. CONDITIONS

The terms and conditions set out in this Agreement shall apply and are incorporated into any contract for hire between NZ Access Hire and the Hirer. NZ Access Hire reserves the right to change any of the terms and conditions of this Agreement provided that NZ Access Hire shall act reasonably when exercising such right. Any amended terms and conditions will be placed on the NZ Access Hire web site and shall apply with effect 10 working days following the date that such amended terms and conditions are placed on the web site unless a later date is specified from which the amended terms and conditions are to apply. Notwithstanding anything contained in this clause 2, NZ Access Hire shall not make any changes to the fees and charges where rates have been quoted for a specific site or a specific project.

### 3. HIRE

- a. The hire period begins from the time the Equipment leaves NZ Access Hire premises and runs until the Equipment is returned to NZ Access Hire at the place of hire or this Agreement is terminated pursuant to Clause 10.
- b. Delivery and removal charges are payable by the Hirer in addition to the hire costs.
- c. The Hirer shall direct NZ Access Hire to the designated area for loading and unloading of the Equipment on the Site. Placement of the Equipment for its use is the responsibility of the Hirer. NZ Access Hire shall not be liable for any damage to the Site or any associated infrastructure arising from the delivery, placement, or removal of the Equipment in accordance with the instructions of the Hirer.
- d. The Hirer authorises NZ Access Hire to bring NZ Access Hire vehicles on to the Site to deliver and/or remove the Equipment, either on the expiry of the hire period or on the breach by the Hirer of any terms and conditions of this Agreement.
- e. The Hirer indemnifies NZ Access Hire against any cost, claim, damage, expense, or liability suffered or incurred by NZ Access Hire whether arising directly or indirectly from NZ Access Hire actions under this Clause 3. For the avoidance of doubt, NZ Access Hire cannot be held liable for any damage to roofs, guttering, windows, cladding, paving, tiling, plants, or any other property whether caused by vehicles, equipment or by any other means.

### 4. HIRER'S OBLIGATIONS

- a. The Hirer shall notify NZ Access Hire in writing immediately if the Equipment is lost or damaged and shall follow all reasonable instructions of NZ Access Hire.
- b. In the case of damage to the Equipment, however caused, the Hirer shall be responsible for and shall indemnify NZ Access Hire for the full cost of all repairs to restore the equipment to the condition it was in at the time of hire.
- c. In addition to the costs set out in Clauses 4 (a) to (c) above the Hirer shall be responsible for and shall indemnify NZ Access Hire for any loss of revenue suffered by NZ Access Hire due to the unavailability of the Equipment for hire due to loss or damage. The costs for loss of revenue shall not exceed the equivalent prevailing rate for 120 days hire of the Equipment.
- d. The Hirer shall:
  - i. Take proper and reasonable care of the Equipment and return it to the place of hire in good order and condition; and
  - ii. Satisfy itself that the Equipment is suitable for the intended use; and
  - iii. Take all necessary steps to prevent injury to any person and all property because of the condition of the Equipment; and
  - iv. Display, maintain and draw attention to safety signs and instructions (as required by law) and ensure that instructions are observed; and
  - v. Conduct a site hazard assessment prior to using the Equipment at the Site; and
  - vi. Use the Equipment in a skillful and lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment; and
  - vii. Immediately notify NZ Access Hire by telephone if the Equipment breaks down or becomes unsafe or if any warning light is activated; and
  - viii. Except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring any claim against NZ Access Hire for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the Equipment; and
  - ix. Ensure that the Equipment is stored safely and securely and is protected from theft and is fully covered by the Hirer's policies of insurance. This Clause 4(e)(ix) applies even if the Equipment has been de-hired for so long as the Equipment is located at the Site or remains in the Hirer's possession.
- e. The Hirer warrants that each person who uses the Equipment shall be competent and qualified to use the Equipment (and where required that person shall hold a current licence or certificate of competency), shall use the Equipment in the manner it was designed to be used, and follow any directions from NZ Access Hire, local authorities, codes of practice or instructions from the manufacturer of the Equipment relating to the use and safety of the Equipment and shall comply with all obligations in relation to the use and control of the Equipment under the Health and Safety at Work Act 2015 and all other relevant legislation.
- f. If the Hirer is not an individual, the person who signs this Agreement on behalf of the Hirer warrants that they have authority to bind the Hirer. Each person so signing hereby indemnifies NZ Access Hire against all losses and costs that may be incurred by NZ Access Hire arising out of the person so signing this Agreement failing to have such power or authority.
- g. The Hirer shall not do, permit or suffer to be done anything in connection with the Equipment or its use whereby any policy or policies of insurance effected in

## 5. WARRANTY AND ACCEPTANCE

- a. The Hirer acknowledges that NZ Access Hire has entered into this Agreement based on information supplied to NZ Access Hire by the Hirer and the Hirer warrants that the information supplied is accurate and complete.
- b. Acceptance by the Hirer of the Equipment shall be deemed to be acceptance of the terms and conditions of this Agreement (as amended from time to time).

## 6. USE AND HANDLING OF EQUIPMENT

- a. The Hirer shall not:
  - i. Require, permit or suffer the Equipment to be used for anything contrary to any Act, regulation, by-law, requirement, code of practice or recognised convention;
  - ii. Affix any of the Equipment to any land or buildings in such a manner as to make it legally a fixture forming part of the freehold;
  - iii. Allow any signs affixed to the Equipment (whether in position at the time of commencement of the hire or subsequently affixed by NZ Access Hire) to be damaged, defaced or covered up;
  - iv. Repair or attempt to repair the Equipment without NZ Access Hire consent;
  - v. Permit or suffer the operation, use or direction of the Equipment by any person who by reason of intake of alcohol or drugs has his or her faculties impaired.
- b. The Equipment shall be at the sole risk of the Hirer throughout the period of hire.

## 7. RESPONSIBILITY FOR LOSS

Under no circumstances shall NZ Access Hire be liable for any direct, indirect, or consequential loss or damage arising out of any breakdown or stoppage of the Equipment or otherwise arising out of or in connection with the hire of the Equipment to the Hirer.

## 8. ASSIGNMENT AND SUBLETTING

- a. This Agreement is personal to the Hirer and is not capable of assignment whether in whole or in part by the Hirer.
- b. The Hirer shall not sub-hire or otherwise part with possession of the Equipment or any part thereof to any third party without first obtaining the written consent of NZ Access Hire which may be granted or refused in the sole discretion of NZ Access Hire. The Hirer at the Hirer's own expense shall protect and defend NZ Access Hire from all claims, liens and legal processes of creditors of the Hirer and shall keep the Equipment and any part thereof free and clear of any such claims.

## 9. PAYMENT

- a. The Hirer shall pay the charges and fees invoiced by NZ Access Hire to the Hirer. These charges and fees include the charges for hire of the Equipment and all materials used and may include additional charges relating to damage to or loss of the Equipment, cleaning costs, delivery and/or removal costs, default interest for late payment, and any other costs payable under the terms of this Agreement. All invoices and statements are sent electronically to the address of the Hirer notified in the Application for Credit unless the Hirer formally requests otherwise.
- b. Payment shall be due not later than the 20th of the month following the date of invoice. If payment is not made by that date, interest will accrue from the date of the invoice in any amount outstanding at the rate of 2.5% per month. Any amount becoming due and payable in terms of this Clause shall be liquidated debt and NZ Access Hire shall be entitled at any time to commence proceedings against the Hirer for payment of the debt including legal and collection costs incurred by NZ Access Hire.

connection with the Equipment, or its use may become void or voidable or whereby the Page 3 of 5 NZ Access Hire Group - Credit Application and Terms and Conditions - 2022 Initial premiums thereon may be increased. (i) If the Equipment is involved in any accident resulting in injury to any person or damage to any property, the Hirer must give immediate notice to NZ Access Hire by telephone followed up by letter or facsimile to NZ Access Hire principal office.

## 10. TERMINATION OF AGREEMENT

- a. NZ Access Hire may immediately and without notice terminate this Agreement and retake possession of the Equipment if:
  - i. the Hirer makes default in the observance or performance of any of the terms and conditions of this Agreement;
  - ii. NZ Access Hire believes on reasonable grounds that the Hirer is about to breach the terms and conditions of this Agreement and that such breach might endanger any person or property; or
  - iii. the Equipment for any reason is damaged so as to be inoperable or unsafe for use; or
  - iv. the Hirer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Hirer or if a receiver is appointed for all or any assets of the Hirer.
- b. Any determination to terminate this Agreement and retake possession of the Equipment shall be without prejudice to the rights of NZ Access Hire in respect of any breach of this Agreement.
- c. The Hirer grants NZ Access Hire or will procure that NZ Access Hire is granted an irrevocable right and authority to enter at any time onto the Site or any place where the Equipment is situated or thought to be situated to remove the Equipment in the event this Agreement is terminated.
- d. The Hirer indemnifies NZ Access Hire against any cost, claim, damage, expense or liability suffered or incurred by NZ Access Hire whether arising directly or indirectly from NZ Access Hire exercising its rights under this Clause 10 or otherwise acting to recover any Equipment hired or monies payable by the Hirer pursuant to this Agreement.
- e. NZ Access Hire will not be liable to the Hirer or any other person for any loss suffered, or liability incurred arising from termination of this Agreement or repossession of the Equipment. (f) If the Hirer breaches any term of this Agreement resulting in NZ Access Hire terminating this Agreement, then without prejudice from NZ Access Hire other legal rights at law and under the terms of this Agreement, NZ Access Hire may charge the Hirer hire costs for the balance of the term of the hire requested by the Hirer. The Hirer acknowledges that this represents a genuine pre-estimate of NZ Access Hire losses if the Hirer breaches the terms of this Agreement.

## 11. INDEMNITY

The Hirer shall indemnify and keep indemnified NZ Access Hire from and against all damage or loss:

- e. suffered or incurred in consequence of:
  - i. any breach of the terms of this Agreement by the Hirer; or
  - ii. any negligent act or omission on the part of the Hirer;
  - iii. Hirer's Representatives during the term of this Agreement.
- f. Otherwise caused by the Hirer or the Hirer's Representatives during the term of this Agreement.

## 18. PRIVACY ACT 1993

If the Hirer is an individual, this Clause 18 shall apply.

- a. NZ Access Hire will collect personal information about the Hirer and this information is principally collected to

## 12. LIMITATION OF LIABILITY

- a. In entering into this Agreement, the Hirer acknowledges that NZ Access Hire has no liability to the Hirer for any indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with this Agreement (whether in contract or in tort) including that resulting from the negligence of NZ Access Hire or arising by operation of law.
- b. Subject to the exclusion of liability in Clause 12(a) above, the maximum aggregate liability of NZ Access Hire for all claims made by the Hirer, whether as a result of any breach of this Agreement or on any other ground or terms whatsoever (including, but not limited to, liability as a result of tort, including negligence) will not exceed the lesser of the hire charges paid by the Hirer to NZ Access Hire pursuant to this Agreement and three months hire charge as paid by the Hirer to NZ Access Hire pursuant to this Agreement.
- c. The Hirer will indemnify NZ Access Hire against any liability, losses, damages or expenses incurred or suffered by NZ Access Hire as a result of any claim Page 4 of 5 NZ Access Hire Group - Credit Application and Terms and Conditions - 2022 Initial made by a third person against NZ Access Hire in respect of any loss or liability arising from this Agreement or arising out of the use of the Equipment hired by the Hirer.
- d. If the Hirer is not acquiring the Equipment for the purposes of a business as defined in the Consumer Guarantees Act 1993, Clauses 12(a) and (c) are subject to any liability which arises under the Act. If the Hirer is hiring the Equipment for the purposes of a business and the Hirer is "in trade" for the purposes of that Act, the provisions of that Act do not apply.

## 13. ORAL AGREEMENTS AND STIPULATIONS

No oral agreement, promise, collateral stipulations, representation, condition, or warranty given or entered into by NZ Access Hire or by any Representative of NZ Access Hire and not in conformity with this Agreement shall be binding upon NZ Access Hire unless confirmed in writing by NZ Access Hire.

## 14. WAIVER

All the rights, powers, and remedies of NZ Access Hire shall remain in full force notwithstanding any neglect, forbearance, or delay by NZ Access Hire in the enforcement of them.

## 15. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Hirer shall observe and comply with the provisions of all Acts, regulations, by-laws, and codes of practice in force during the period of hire in relation to the Equipment and the work on which the Equipment is to be employed and the manner of performance of that work and in relation to the Site and with all orders and directions lawfully given by any competent authority.

## 16. CONTRACTING OUT

This Agreement contains the whole of the terms of the contract between the parties and all other terms, conditions and warranties which might otherwise have been implied or have any application are hereby to the maximum extent permitted by law expressly excluded.

## 17. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- a. The Hirer acknowledges that title to the Equipment remains with NZ Access Hire at all times.
- b. NZ Access Hire may create a security interest in the Equipment. If so, the provisions of this Clause 17 shall apply. All terms in this Clause 17 have the meaning given in the PPSA.
- c. On the request of NZ Access Hire, the Hirer shall promptly execute all documents, provide all necessary information, and do anything else required by NZ Access Hire to ensure that the security interest created under this Agreement constitutes a perfected security interest

evaluate the application for hire of Equipment requested by the Hirer and to determine whether NZ Access Hire will accept the request for hire of the Equipment.

- b. The Hirer consents to NZ Access Hire collecting, using and holding personal information about the Hirer for the purposes referred to in this Clause 18. The failure by the Hirer to provide complete and accurate information may result in the Hirer's application to hire the Equipment being declined or the Agreement subsequently being terminated by NZ Access Hire. The Hirer further agrees that NZ Access Hire may collect information from any third party who can provide NZ Access Hire with information relating to the Hirer's credit history and/or previous hire contracts entered into by the Hirer.
  - c. The Hirer has rights of access to personal information held by NZ Access Hire and the Hirer can request correction of any such personal information, pursuant to the provisions of the Privacy Act 1993.
  - d. The Hirer agrees that its personal information may be used by NZ Access Hire to advise the Hirer of NZ Access Hire other goods and services. The Hirer agrees to NZ Access Hire disclosing its personal information to any third party in connection with credit management and control purposes.
  - e. The Hirer and each person who signs NZ Access Hire application for credit for and on behalf of the Hirer authorises NZ Access Hire:
    - i. To collect, retain, and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or such other signatory's creditworthiness;
    - ii. To disclose information about the Hirer or such other signatory to any person who guarantees, or who provides insurance, or who provides any credit support in relation to the Hirer's obligations to NZ Access Hire and to such persons as may be necessary or desirable to enable NZ Access Hire to exercise any power, enforcement or attempted enforcement of NZ Access Hire rights, remedies and powers under this Agreement.
- ## 19. DISPUTE RESOLUTION
- a. A party may notify the other party ("Dispute Notice") if that party considers that a dispute exists between the parties in relation to the terms of this Agreement ("Dispute"). As soon as reasonably practicable after the Dispute Notice has been given, the parties shall co-operate and negotiate in good faith in an endeavour to resolve the Dispute. A party may refer the Dispute to mediation under this Agreement if the parties are unable to resolve the Dispute within 7 days after the date on which the Dispute Notice is delivered.
  - b. Mediation under this Agreement will be governed in all respects by the terms of the Resolution Institute standard mediation agreement (NZ version). The mediation must be conducted by a mediator and for a fee determined by the parties or (failing agreement within 7 days after referral to mediation) the Chairperson for the time being of the Resolution Institute. Subject to anything to the contrary in this Agreement, the parties must act in good faith in the mediation in an endeavour to resolve the Dispute expeditiously.
  - c. Nothing in this Clause 19 precludes a party seeking or obtaining any order or relief by way of injunction or declaration or other equitable or statutory remedy against the other party to the Dispute or any other

in the Equipment which will have priority over all other security interests in the Equipment.

- d. The Hirer waives its rights under Sections 114 (1) (a), 116, 117, 119, 120 (2), 121, 125, 126, 127, 129, 131 to 134 (inclusive) and 148 of the PPSA.

person where the party believes the order or relief is necessary for the urgent protection of that party's rights or property.

- d. For the avoidance of doubt, the existence of a Dispute shall not relieve a party from the requirement to perform its obligations under this Agreement generally and, notwithstanding the Dispute, each party must continue to perform its obligations under this Agreement to the maximum extent possible (having regard to the nature of the Dispute).
- e. All steps under this Clause 19 to resolve a Dispute shall take place in Auckland..



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**ACCESS HIRE**

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