

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.
A \$20 credit will go against your new account if this application is completed and signed in full, with no changes made.
Completed account applications to be emailed to accounts@nchire.co.nz or posted to NC HIRE 53 Carters Road Amberley 7410

DATE: _____ REF No. _____

CLIENT'S TRADE NAME: _____

CLIENT'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____
(We send out the occasional special offer or promotion via email, please tick here if you do not wish to receive these)

Billing Address: _____ Physical Address: _____

Postcode: _____ Postcode: _____

COMMERCIAL CLIENTS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

Postcode: _____ Postcode: _____

ID: _____ Date of Birth: _____ ID: _____ Date of Birth: _____
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 2: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 3: _____ Address or A/C No: _____

Phone: _____ Fax: _____

The Accounts payable person: Name _____ Phone _____ Email _____

Do you use order numbers when purchasing?

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of NC Hire Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

SIGNED (CLIENT): _____ SIGNED (SUPPLIER): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____



Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of NC Hire Limited and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Client") *[Insert Company Name In Box Provided]*

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Client and all further sums of money from time to time owing to the Supplier by the Client in respect of goods and services supplied or to be supplied by the Supplier to the Client or any other liability of the Client to the Supplier, and the due observance and performance by the Client of all its obligations contained or implied in any contract with the Supplier, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to the Supplier the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the Goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
 - (a) the supply of goods and/or services to the Client; or
 - (b) the recovery of monies owing to the Supplier by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees costs of collection and legal costs; or
 - (c) monies paid by the Supplier with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Client, and a third party or any combination thereof, over the supply of goods and/or services by the Supplier to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Supplier by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1
SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

GUARANTOR-2
SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE

©Copyright - EC Credit Control 1999 - 2016



NC Hire Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means NC Hire Limited, its successors and assigns or any person acting on behalf of and with the authority of NC Hire Limited.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.6 "Price" means the Price payable for the Goods/Equipment hire as agreed between the Supplier and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 The Supplier warrants that Goods/Equipment supplied shall meet all relevant safety regulations and standards. The Client acknowledges receipt of the Supplier's operating/safety guidelines, and agrees to follow the guidelines therein. The Client further acknowledges that the Supplier accepts no responsibility for any loss, damage or injury which may be incurred as a result of the Client's failure to follow the safety/operating guidelines provided by the Supplier.

3. Finance

- 3.1 If this agreement is conditional upon the Client obtaining a loan from a financial institution then they must provide the Supplier with written confirmation of the loan approval before the Supplier will commence any Goods.

4. Trade-In

- 4.1 In the event that the Supplier accepts a trade-in as part payment of purchases, Goods or machinery outright, then the Client acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.

5. Change in Control

- 5.1 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, contact phone or fax number/s, or 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.

6. Price and Payment

- 6.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Price as at the date of delivery of the Goods/Equipment according to the Supplier's current price list; or
 - (c) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for period specified on the quotation.
- 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, availability of machinery or as a result of any increase to the Supplier's in the cost of materials and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 6.3 At the Supplier's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on delivery of the Goods/Equipment;
 - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
 - (c) for certain approved Client's, 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;
 - (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 the Client by the Supplier.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Client and the Supplier.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. 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 Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods/Equipment

- 7.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.2 At the Supplier's sole discretion the cost of delivery is included in the Price.
- 7.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 7.4 Delivery of the Goods/Equipment to a carrier, either name by the Client or failing such naming to a carrier at the discretion of the Supplier for the purpose of transmission to the Client, is deemed to be delivery of the Goods/Equipment to the Client.
- 7.5 The costs of carriage and any insurance which the Client reasonably directs the Supplier to incur shall be reimbursed by the Client (without any set-off or other withholding whatsoever) and shall be due for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 7.6 Where there is no agreement that the Supplier shall send the Goods/Equipment to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.
- 7.7 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.8 Delivery of the Goods/Equipment to a third party nominated by the Client shall be deemed to be delivery to the Client for the purposes of this agreement.
- 7.9 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

8. Risk to Goods

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are 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 Goods. 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 dealing with the Supplier to make further enquiries.

- 8.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 The Client acknowledges that any free first service offered by the Supplier is for free labour costs and any replaced consumables or parts shall be at the Client's expense. Such service should be completed between eight (8) – ten (10) hours of use or one (1) month, whichever is the sooner, with the Goods being returned to the Supplier to enable the Supplier to complete this service.
- 9. Title to Goods**
- 9.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid the Supplier all amounts owing to the Supplier; and
 - the Client has met all of its other obligations to the Supplier.
- 9.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
- until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
 - the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - the Client should not convert or process the Goods or intermix them 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 Supplier as it so directs.
 - the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
 - the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
 - the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
 - the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 10. Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - the provisions of clause 9 apply; and
 - a security interest is taken in all Goods/Equipment previously supplied by the Supplier to the Client (if any) and all Goods/Equipment that will be supplied in the future by the Supplier to the Client.
- 10.2 The Client undertakes to:
- 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 change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
 - not register a financing change statement or a change demand without the prior written consent of the Supplier; and
 - immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 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.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 10.1 to 10.5.
- 11. Security and Charge**
- 11.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 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.
- 11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
- 12. Client's Disclaimer**
- 12.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
- 13. Consumer Guarantees Act 1993**
- 13.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 14. Defects**
- 14.1 The Client shall inspect the Goods/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 15. Returns Of Goods**
- 15.1 Returns of Goods will only be accepted provided that:
- the Client has complied with the provisions of clause 14.1; and
 - the Supplier has agreed in writing to accept the return of the Goods; and
 - the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
 - the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.2 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 16. Warranty**
- 16.1 The conditions applicable to any accepted warranty claim are:
- all warranty claims must first be accepted by the manufacturer and/or the Supplier prior to any work being commenced under such claim, with the claim procedure being:
 - that the Client notifies and discusses the issue with the Supplier's customer services team;
 - the Supplier will seek authorisation from the manufacturer or provider (where applicable) to ascertain the quickest and most efficient repair method;
 - on approval to proceed, the Supplier will arrange with the Client as to repair location and any associated costs of salvage, pickup, or onsite repair;

- (iv) on completion of the repair, the Supplier shall seek approval from the Client to sign off any necessary documentation.
- (b) the Goods are to be returned to the Supplier for service or repair. Where the Supplier agrees to onsite servicing, pickup or delivery, the Supplier shall reserve the right to charge for associated costs;
- (c) the Supplier shall not be held liable for any loss of production, income, costs, losses or damages arising from the time the Goods are out of service under a warranty claim;
- (d) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (e) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
- (f) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or repairing the Goods or in properly assessing the Client's claim.
- 16.2 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 16.3 In the case of some second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that the warranty given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising. Where at the Supplier's sole discretion, a ninety (90) day warranty is applied to certain second hand Goods, such warranty shall be noted on the sales invoice or docket and will apply only to the major components of the Goods with any replacement component being warranted for the balance of the original warranty period.
- 16.4 Excluded from the warranty are the following:
- (a) any blade sharpening, extensive cleaning or repairs resulting from heavy use;
 - (b) replacement consumables including, but not limited to, tyres, oils, fuel, lubricants, etc.;
 - (c) any Goods that are used for rental or hire purposes;
 - (d) components on second hand Goods including, but not limited to, panels, guards, hand rails, lenses, decals, etc.;
 - (e) components on any Goods that are damaged as a result of impact or hard use including, but not limited to, worn bearings, cotter pins and retainers;
 - (f) any defect resulting from general wear and tear such as may be seen to fabric, rubber grips, cushions, grease fittings, paint or steel surface or cosmetic imperfections;
 - (g) damage from the improper adjustments including, but not limited to, cables, pulleys, loose wheel hubs, seals and handles;
 - (h) any resultant damage from natural disasters, fire, abrasion or corrosion;
 - (i) failure to maintain the Goods or perform periodic maintenance checks resulting in damage arising from the Goods being operated with inappropriate oil, water, lubricants or other fluid levels;
 - (j) any damage occurring as the result of fitting spurious parts or lubricants, the incorrect use of attachments or tools, or modifications or alterations not authorised by the Supplier.
17. **Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 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).
- 17.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods/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.
- 17.4 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 in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
18. **Cancellation**
- 18.1 The Client may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
19. **Privacy Act 1993**
- 19.1 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by 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 purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.
20. **Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 20.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.
21. **General**
- 21.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Christchurch in New Zealand.

- 21.3 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 terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 21.4 The Client shall not be entitled to set off against, or deduct from the Price, 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.
- 21.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Additional Terms & Conditions Applicable to Hire Only

22. Hire Period

- 22.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 22.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 22.3 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 22.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 22.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier 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 the Client.

23. Risk to Equipment

- 23.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 23.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 23.3 The Client agrees to arrange adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 23.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

24. Damage Waiver

- 24.1 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 (in its sole discretion), prior to the Client taking possession of the Equipment. The Client is not entering into a contract for insurance with the Supplier by paying for the damage waiver.
- 24.2 Subject to receipt by the Supplier of the excess (Clause 25) and except for the exclusions scheduled below (clauses 24.2(a) - 24.4) and if the Client has paid for the damage waiver, the Client shall not be liable to the Supplier for any loss of or damage to the hired Equipment or for any consequential loss or damage incurred by the Supplier and/or any other parties during the term of the hire PROVIDED THAT the Client:
- (a) has at all times acted with reasonable care;
 - (b) has delivered to the Supplier a detailed report on the events giving rise to the loss and/or damage of the hired Equipment, including the extent if any of criminal act, police report and acknowledgement. The report and/or supporting documentation to be received by the Supplier within twenty four hours of the Client becoming aware of the loss and/or damage; and
 - (c) has undertaken such action as the Supplier would have reasonably expected to enable the Supplier to recover such loss from any potentially responsible third parties.
- 24.3 The damage waiver does NOT cover:
- (a) theft or criminal damage to Equipment unless reasonably secured;
 - (b) damage or loss due to misuse, abuse or non-adherence to accepted load or towing tolerances;
 - (c) damage resulting from overloading of electrical and/or motor capacity;
 - (d) damage to tyres or tubes howsoever caused during the term of the hire;
 - (e) damage resulting from inadequate provision of lubricants or other servicing of the Equipment;
 - (f) damage or loss to any of the accessories forming part of the hired 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;
 - (h) damage or loss arising from breach by the Client of the conditions of the Hire agreement;
 - (i) damage or loss from use of the Equipment in contravention of any Statute or By Law.

- 24.4 Special conditions or exclusions may also apply, 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.

- 24.5 The Supplier and Client agree and acknowledge that Section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusions in clauses 24.2(a) - 24.4 inclusive as if clause 24 constituted a contract of insurance (not withstanding that clause 24 is NOT a contract of insurance).

25. Excess

- 25.1 Notwithstanding the payment of the damage waiver, in the event of any loss, damage, or theft of the Equipment which is covered by the damage waiver, the Client will pay an excess. The excess will be the actual cost of remedying the loss or damage OR limited to ten percent (10%) of the new list price of the Equipment or \$3,000 plus GST for any one item as scheduled in the hire agreement whichever is the lower.

26. Title to Equipment

- 26.1 The Equipment is and will at all times remain the absolute property of the Supplier.
- 26.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 26.3 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.

27. Client's Responsibilities

- 27.1 The Client shall:
- (a) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (c) have a system in place to check, detect, repair and report faults in the Equipment;

- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier, demonstrated by the Supplier or posted on the Equipment;
- (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
- (f) ensure that no member of the public is near the Equipment when it is being operated;
- (g) ensure that no children have access to or are near the Equipment regardless of whether or not the Equipment is in operation at the time;
- (h) that all safety guards are in place and functioning at all times;
- (i) ensure that all Equipment operators wear appropriate tight clothing and have no loose hair or belts that could become entangled in the Equipment;
- (j) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (k) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
- (l) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (m) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (n) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (o) not exceed the recommended or legal load and capacity limits of the Equipment;
- (p) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (q) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (r) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment.

27.2 Immediately on request by the Supplier the Client will pay:

- (a) all costs incurred in cleaning the Equipment;
- (b) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
- (c) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (d) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (e) the cost of fuels and consumables provided by the Supplier and used by the Client.

28. Wet Hire

28.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.