

NZ MACHINE HIRE LIMITED

GENERAL TERMS AND CONDITIONS OF HIRE

1. DEFINITIONS.

"Block Hours" is defined as a periods of not more than twelve (12) hours {for example, eleven (11) hours is one Block Hour ; 17 hours is 2 Block Hours}

"Days of Hire" is defined as the total number of Block Hours from the time the Equipment leaves the Owner's premises/store/yard enroute to the Hirer's designated Place of Delivery until it is returned safely to the Owner's premises/store/yard.

"Equipment" shall mean Equipment supplied on hire by the Owner to the Hirer as described on the invoices, quotation, work authorization or any other forms as provided by the Owner to the Hirer (and where the context so permits shall include any supply of Services as hereinafter defined).

"Handler/Driver" refers to the person operating and/or handling the Equipment.

"Hirer" is the Company firm or person taking the Owners Equipment on hire and this expression includes his successors or personal representatives.

"Hire Agreement" refers to the agreement between the Owner and Hirer in respect of hire of the Equipment under this terms and conditions.

"Hire Rate" shall be the rate of hire of the Equipment as provided overleaf/Order Form and subject to the provisions of these General Terms and Conditions of Hire.

"Machine Hours" is defined as the maximum number of hours the machine is expected to work each day. The Machine Hours is limited to 6 hours.

"NZ Machine Hire" is the Company supplying the Equipment on hire and is hereinafter referred to as the "Owner" and this expression includes its successors.

"Period of Hire" is defined as the time the hire commences until the time the Equipment is returned/brought/arrives safely at the Owner's premises/property/yard as stated in the Order Form or as agreed by the Owner.

"Regulations" means any Act of Parliament, regulation, bylaw or other similar instrument whether national or local, including any amendment thereto or re- enactment or replacement thereof.

"Site" shall mean the designated place/address as agreed between the Hirer and Owner for the delivery of the Equipment.

2. ACCEPTANCE

(a) The Hirers order, whether oral or in writing, for the supply of Equipment and/or the Hirer's acceptance of Equipment shall be construed as an expression of acceptance of these General Terms and Conditions of Hire and so far as any provision of the Hirer's said order be inconsistent therewith these General Terms and Conditions of Hire shall be deemed to prevail.

(b) Any variation or purported variation of these General Terms and Conditions of Hire shall be deemed to be of no effect unless otherwise agreed in writing signed by a Director or Principal of the Owner.

(c) The Hirer agrees and acknowledges that in executing this Agreement it does not rely and has not relied on any representation or statement (if any) by the Owner and/or its servants and/or

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agents with regard to the Equipment or effect of this Agreement

3. COMMENCEMENT OF HIRE

(a) Subject to the other provisions of this Contract, the Owner shall supply the Equipment on the delivery date and at the Site stated overleaf. The Period of Hire shall commence when the Equipment leaves the Owner's premises/store/yard. Hire charges shall commence at the commencement of the Period of Hire.

4. RISK

(a). Unless otherwise stated on the face of this Contract, Responsibility for loss or damage to the Equipment is accepted by the Hirer from the time the Equipment leaves the Owner's premises/store/yard until it is returned to the Owner's premises/store/yard as agreed by the Owner.

(b). The Hirer will insure, or self-insure, the Owner's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to the property arising out of the Equipment. Further, the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

(c) If the Hirer elects for the Owner to insure the Equipment (subject to the Owner's agreement), the Hirer shall pay additional costs which Hirer shall pay upon hire or upon being invoiced at the discretion of the Owner.

(d) The Hirer acknowledges that it/he/she is aware of the Health and Safety policies at the Owner's premises/yard/site and will ensure that it/its/his/her employee/agent will duly comply with the measurements in place while at the Owner's premises/yard/site.

4. MAINTENANCE AND REPAIR

Owners Obligations:

(a) The Owner shall ensure that at the commencement of hire the Equipment shall be in good working order and properly maintained. Unless notification to the contrary is received by the Owner within 24 hours of delivery to the Site, the Equipment shall be deemed to have been delivered in good working order.

(b) The Owner shall (save as hereinafter provided) carry out and provide all necessary repairs and replacements as quickly as reasonably possible and (so far as reasonably possible) and during normal working hours at times to suit the convenience of the Hirer.

5. HIRER'S OBLIGATION

(a) The Hirer shall return the Equipment in the same condition as it was at commencement of the hire period unless otherwise agreed in writing between the Owner and the Hirer.

(b) The Hirer shall forthwith notify the Owner if the Equipment breaks down or fails to work properly, or if any repairs or replacements are necessary.

(c) Any repairs undertaken or replacement carried out by the Owner on the Equipment hired by the Hirer during the course of hire will be charged onto the Hirer.

(d) The Hirer shall at all reasonable times allow the Owner or its accredited representatives or its insurers' representatives to have access to the Equipment to inspect, test, adjust, repair or replace the same

(e) The Hirer shall at all times keep the Equipment insured to its replacement value unless otherwise agreed by the Owner.

6. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

(a) The Hirer acknowledges that title to hired equipment remains with the Owner at all times.

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(b) Hire or acquisition of the equipment may create a security interest in the equipment. If so, this document constitutes a security agreement for the purposes of the PPSA and the provisions of this clause 6 apply. All terms in this clause 6 have the meaning given in the PPSA and section references are sections to sections of the PPSA.

(c) On the request of the Owner, the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under the Contract (including these Conditions) constitutes a perfected security interest in the equipment and their proceeds which will have priority over all other security interests in the equipment.

(d) The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with the Contract.

(e) The Hirer waives its rights under sections 114(1) (a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133, and 148 of the PPSA.

7 HIRERS LIABILITY FOR LOSS OR DAMAGE

(a) The Hirer accepts full responsibility to the Owner for loss or damage to or destruction of the Equipment suffered during the period of hire from whatever cause the same may arise (fair wear and tear or Owners Negligence excepted) and is fully responsible to the owner for the safe keeping of the Equipment and its return in equal order to the Owner at the end of the hire (fair wear and tear excepted).

(b) The Hirer accepts all liability and responsibility in respect of, and shall fully and completely indemnify the Owner against, all third party claims and losses howsoever arising in respect of damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the Equipment or its use (including but not limited to the payment of all damages costs and charges in connection therewith except insofar as the damage, loss, destruction, injury or death directly results from due to the negligence of the Owner its employees or agents.

(c) The Owner shall not be liable to the Hirer in respect of any damage to or loss or destruction of the property of the Hirer nor in respect of the personal injury or death of the Hirer or the Hirer's employees or contractors or other person in any way caused by or relating to the Equipment or its use except insofar as any such damage loss destruction injury or death directly results from the negligence of the Owner its employees or agents.

8 PAYMENT- 7 days notice upon pickup chattel by customer —weekend hire (discretion)

(a) Unless otherwise agreed in writing the Owner shall render invoices to include (in addition to Hire Rate) where applicable the price of transport to and from the Site, insurance and licensing and any other costs incurred by the Owner as a result of this hire agreement.

(b) Immediately upon the hiring being terminated by the Owner in accordance with sub clause 13(b) the Hirer shall pay to the Owner (in addition to any compensation payable hereunder) all moneys then accrued due under this contract and any moneys which the Owner may be liable to pay to any third party by reason of any seizure or removal.

(c) The Hirer shall pay the Owner forthwith for all repairs and replacements to the Equipment, except from repairs and replacements arising from fair wear and tear or from notification (given under the proviso to paragraph (a) of the Owners obligation under Clause 5 hereof.

(d) The Hirer shall pay the Owner any additional charges incurred by the Owner as a result of improper usage or return of Equipment which is not in the same condition as it was at time of commencement of hire including but not limited to cost of cleaning.

(e) Every additional Machine Hours will incur an additional fee of \$30.00 plus GST

(f) The Hirer may at the Owner's discretion be required to pay a Bond at signing the Hire

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Agreement.

9 SUBLETTING

The Hirer shall not without the consent of the Owner assign, sublet, mortgage, charge, pledge, and part with possession of or otherwise deal with the Equipment.

10 HANDLING OF EQUIPMENT

(a) The Equipment shall remain the property of the Owner but shall at all times after delivery to the Site be under the direction or control of the Hirer only. The Hirer is fully responsible to the Owner for the use of the Equipment.

(b) The Equipment is to be only used for purposes and in places for which it is suitable and for the Hirer's own business and in a skillful safe and workmanlike manner and in accord with the relevant laws and regulations.

(c) The Hirer shall not use or cause or permit any other person to use the Equipment on any public road without having first obtained the consent in writing of the Owner. In all cases the Hirer shall ensure that the Handler/Driver holds a current driving license applicable and is authorized by the Hirer to operate the Equipment, such that regulatory and statutory compliance is strictly maintained at all times.

(d) The Owner shall on or before giving such consent license and insure the Equipment in accordance with regulatory requirements and or relevant statutory enactments at the hirers expense unless otherwise agreed.

(e) The Hirer shall notify the Owner immediately in the event of any accident loss or damage arising and in any caused by or relating to the use of the Equipment howsoever caused. Oral notification shall be confirmed in writing to the Owner as soon is reasonably possible.

11 CHANGE OF SITE

Other than in the course of reasonable operation, the Hirer shall not move or permit the Equipment to be moved from the Site specified overleaf without the Owners prior consent in writing. Any consent given by the owner is without prejudice to all the other obligations of the hirer under this contract.

12 OWNER PLATES

These may be affixed or marked on the Equipment by the Owner and shall not be removed,

13 TERMINATION OF HIRE

(a) Except in the case of a fixed term contract the hire of the Equipment may be terminated by either party giving the other party not less than seven (7) days notice.

(b) Without prejudice to the other provisions of this contract, should the Hirer:

(i) Fail to make payment of the Hire charges as detailed in paragraph 8(a); or

(ii) Fail to observe and perform any of the other terms and conditions of this contract; or

(iii) Do or cause to be done or permit or suffer anything whereby the Owner's rights in the Equipment are prejudiced or put into jeopardy; or

(iv) Commit any act of bankruptcy or have a receiver appointed or make any arrangement or composition with his creditors, or being a company go into liquidation whether compulsory or voluntary; or

(v) suffer any distress or execution upon its/his/her property. Then in any such case the Owner may, forthwith determine the hiring and seize and remove the Equipment for which purpose it shall be lawful for the Owner to enter into or upon any premises or Site where the Equipment may be.

(vi) When the hire is terminated it shall be the responsibility of the Hirer to deliver the Equipment to the Owner's premises/yard/site unless otherwise agreed by the Owner. If the Owner agrees to collect the Equipment from the Site the Hirer shall do everything that is

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necessary to facilitate the collection; All cost incurred/involved in the collection of the Equipment and transportation of the same to the Owner's premises/store/yard shall be borne by the Hirer. The Hirer shall be the said cost upon receiving the invoice from the Owner which shall be paid within 7 days of receipt of invoice. The Hirer shall continue to accept full responsibility and liability as set out in Clause 7 of this contract until the Equipment is received by the Owner at the Owner's premises/store/yard.

14 ALLOWANCES AND LIABILITY

(a) Without prejudice to the provisions for payment hereinbefore set out, the Hirer shall be fully liable to the Owner for damages for any breach of this Contract.

(b) The Owner shall not be liable to the Hirer for any consequential or indirect loss or damage (including loss of profits) arising out of any accident or damages howsoever caused, provided always that nothing in this sub clause shall protect the Hirer against liability arising from a fundamental breach of contract on its part.

(c) The owner shall not be liable to the Hirer for any loss or damage caused by delay in delivery or non delivery of the Equipment or by delay in repairing or replacing the Equipment.

(d) Hire charges shall continue during any stoppage whether or not the Equipment is returned to the Hirers Works and whether or not a replacement of the Equipment is supplied for the period of the stoppage save that by agreement with the Hirer that the Owner may give credit against hire charges for any stoppage due to a breakdown of the Equipment caused by an inherent fault or fair wear and tear notified to the Owner by the Hirer under Clause 5 hereof.

(e) The Hirer shall be liable for hire charges at the "Hire Rate" in respect of any period after the termination of this Agreement until the Equipment is safely delivered/brought to the Owner's premises/store/yard as agreed by the Owner.

15 INSURANCE

(a) The Hirer shall at the hirer's expense fully insure with reputable insurers unless otherwise agreed by the Owner the Equipment as described overleaf for the value shown/full replacement, against loss or damage or destruction howsoever arising:

- (i) in respect of all the Hirers liability (or responsibility) and indemnify the Owner within sub Clause 7 above; and
- (ii) in respect of the Hirer's liability to third parties relating to the Equipment or its use.

(b) The Hirer shall

- (i) Produce the policy or policies effected hereunder for inspection on demand and
- (ii) Hand the proceeds of any claim under sub Clause (i) above to the Order of the Owner.

(c) Subject to the Owner's prior approval, the Hirer can opt not to insure the Equipment. Such approval is subject to the Hirer paying an additional 5% of the Hire Rate in consideration for the Owner to assume the responsibility of insuring the Equipment as required by the Owner. This has to be agreed between the parties prior to commencement of the Hire

16 WARRANTIES

(a) The Hirer acknowledges and warrants to the Owner that:

- (i) it has satisfied itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes; and
- (ii) it has relied solely on its own skill and judgement and it has not relied on any representation, statement or warranty made by the Owner or any of the Owner's employees, agents or contractors about the performance of the Equipment or the suitability of the Equipment for its intended use.

(b) These terms are subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically

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excluded).

(c) All warranties and guarantees express or implied (including, any implied warranties of merchantable quality and fitness for purpose) that may be excluded by law are excluded to the maximum extent permitted by law including the warranties and guarantees set out in the Sale of Goods Act 1908.

17. INDEMNITY

(a) The Hirer will at all times indemnify the Owner from and against all loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) the Owner incurs and all actions, suits, claims, demands and other proceedings whatsoever or howsoever made or brought against the Owner, as a consequence of:

- (i) any breach of these Terms by the Hirer; or
- (ii) any representation made, or any act, omission, or negligence committed by the Hirer or by those for whom the Hirer is responsible; or
- (iii) any failure to install or use the Equipment in accordance with the manufacturer's and the Owner's guidelines and specifications.

18. DEFAULT & CONSEQUENCES OF DEFAULT

(a) Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

(b) If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis and the Owner's collection agency costs.

(c) Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), the Owner may suspend or terminate the supply of the Equipment and/or Services to the Hirer and any of its other obligations under the Terms. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner exercised its rights under this clause.

(d) Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:

- (i) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to meet its payments as they fall due; or
- (ii) the Hirer 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
- (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

19 LIMITATION OF LIABILITY

(a) notwithstanding anything to the contrary in these terms, and except to the extent prohibited by law, the Owner will not be liable whether in Tort, contract or otherwise, to the Hirer for any loss or damage of any kind whatsoever, indirect, special or consequential losses, damages, liabilities, costs and/or expenses sustained, suffered and/or incurred by the Hirer and/or any other party in relation to the installation/operation/handling and use of the Equipment.

(b) If the Owner is found to be liable, the Owner's liability under these terms, whether in contract, Tort or otherwise is limited (to the fullest extent permitted by law), at the Owner's option, to replacing the Equipment, or to an amount not exceeding the total Hire Rate already paid by the Hirer for the relevant Equipment.

20. PRIVACY

(a) The Hirer and the Guarantor/s (if separate to the Hirer) authorises the Owner to:

- (i) collect, retain and use any information about the Hirer, for the purpose of assessing the Hirer's creditworthiness or marketing products and services to the Hirer; and
- (ii) to disclose information about the Hirer, whether collected by the Owner from the Hirer directly or obtained by the Owner 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 Hirer.

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(b) Where the Hirer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Privacy Act 1993.

(c) The Hirer shall have the right to request the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Owner to correct any incorrect information about the Hirer held by the Owner.

21 . TIME OF INDULGENCE

Any time or other indulgence granted by the Owner shall not affect the strict rights of the Owner under this Contract.

22. GOVERNING LAW

(a) The Law governing this contract shall be the law of New Zealand.

23. WAIVERS

(a) A waiver by either party of any of its rights or any obligation of the other party is effective only if in writing and expressly stated to be a waiver for the purposes of this Hire Agreement.

24. COMPLETE AGREEMENT

(a) This Hire Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Hire Agreement. This Hire Agreement supersedes any prior agreements with respect to its subject matter.

25. SEVERABILITY

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

I the Hirer acknowledge that I have read and understand the terms and conditions of the NZ Machine Hire ltd hire agreement.

Hirer's Name:.....

Company Name (if applicable).....

Hirer's signature:.....

Date:.....

Machine Number:.....

Machine Hours:.....