

Hire Terms and Conditions, The Maintainers Limited trading as TML Hire

1 Definitions

1.1 "Customer" means the person or entity hiring the Equipment and includes any person who purports to be acting on behalf of the Customer.

1.2 "Contract" means any document (including an email) issued by the Owner setting out the specific details of the hire of particular Equipment to the Customer.

1.3 "Equipment" means the equipment, tools, machinery and vehicles provided by the Owner for hire to the Customer, as described on a Contract.

1.4 "Owner" means TML Hire or The Maintainers Limited (as named on the relevant Contract, quote or invoice).

2 Acceptance

2.1 These terms and conditions apply whenever the Owner supplies any Equipment on hire to the Customer, unless expressly agreed otherwise in writing.

2.2 By requesting the hire of Equipment from the Owner, the Customer acknowledges and agrees to these terms and conditions, whether or not they are signed by the Customer.

2.3 The Owner is entitled to rely and act upon any instruction, request, notice or other communication from any person who purports to be an employee, contractor or agent of the Customer (including, without limitation, any transport provider which collects or returns the Equipment), each of which will bind the Customer. Any information, instruction or documentation provided by the Owner to any such person will be deemed to be provided to the Customer.

3 Charges and payments

3.1 The applicable charges for the hire of the Equipment are set out on a Contract and/or any written quote provided by the Owner to the Customer.

3.2 Unless otherwise agreed in writing, freight, the cleaning, repair or maintenance charges referred to in clause 6.10, and goods and services tax are each payable by the Customer in addition to the charges.

3.3 The Owner may at any time require the Customer to pay a security bond for charges, damage and any other amounts payable by the Customer under these terms and conditions.

3.4 The Owner may withdraw a quote before it is accepted and, in any event, a quote will lapse, without notice, 30 days after it is given.

3.5 The Customer must pay all amounts set out in each invoice issued by the Owner in full, without any set-off or deduction, by the due date and in the manner specified on the invoice. The Owner may require payment in full of all charges prior to the commencement of the hire period.

3.6 If any amount payable under these terms and conditions is not paid by the due date, without limiting any other right or remedy the Owner may have:

(a) the Owner may suspend or terminate the hire of any Equipment;

(b) the Customer will, on demand, pay interest at 2% above the current overdraft rate charged by the Owner's principal trading bank, calculated on a daily basis from the due date until payment is received in full and accruing both before and after judgment;

(c) the Customer will, on demand, pay all expenses and legal costs of the Owner (including those calculated as between solicitor and client) in recovering any outstanding payment or otherwise enforcing its rights under these terms and conditions.

4 Hire period

4.1 The hire period commences from when the Equipment leaves the Owner's premises and ends when the Equipment is returned to the Owner's premises or, if later, at the end of any minimum hire period specified in the Contract.

4.2 Any hire period specified in the Contract may only be extended with the express written approval of the Owner. Additional charges are payable by the Customer (at the Owner's usual rates) if any Equipment is not returned to the Owner in the condition required by clause 6.9 within any hire period specified in the Contract. If no particular hire period is specified in the Contract (or if no Contract is issued), the hire period shall not exceed 12 months less one day from the day the hire period commences, and the Customer must return the Equipment before the end of this period (unless the Owner expressly agrees otherwise in writing or the Owner requires the Equipment to be returned earlier).

4.3 No allowance or extension is made for time during which the Equipment is not in use for any reason, unless the Owner expressly agrees otherwise in writing.

5 Delivery of Equipment

5.1 If requested by the Customer, and agreed by the Owner, the Owner will transport the Equipment, on behalf of the Customer and at the Customer's cost, to and from the Customer's address specified on the Contract. The hire period includes this period of transportation and accordingly the Customer remains responsible and liable for any loss or damage to the Equipment during such transportation.

5.2 Any delivery or availability date given by the Owner is an estimate only. The Owner is not liable for any delay (howsoever caused).

5.3 The Owner is not responsible or liable to the Customer or any third parties for any damage that may be done to driveways, other surfaces or underground services during the delivery or collection of the Equipment.

5.4 The Customer irrevocably authorises the Owner (together with its agents and contractors) to enter on the Customer's nominated delivery address and any other address where the Equipment is located without notice in order to deliver, repair, maintain and collect the Equipment (including in the circumstances contemplated by clause 9.3). The Customer must procure all other consents and rights necessary to enable, and indemnifies the Owner (and its agents and contractors) from and against any liability incurred in connection with, the exercise of such rights.

6 Customer's responsibilities

6.1 The Customer will:

6.2 satisfy itself that the Equipment is safe, suitable and sufficient to complete the purpose required by the Customer;

6.3 ensure that an appropriate representative of the Customer completes any induction required by the Owner regarding the operation of the Equipment and that representative provides an equivalent induction to all other persons operating the Equipment;

6.4 operate the Equipment safely, in accordance with all applicable law including the Health & Safety at Work Act 2015, regulations, standards and best practice guidelines, only for its intended use and in accordance with any applicable operating manual and/or any manufacturer or Owner recommendations and instructions and inductions provided by the Owner;

6.5 ensure (and provide evidence to the Owner on request) that all persons operating or otherwise using the Equipment are competent, suitably instructed in its safe and proper use, and hold the appropriate qualifications, licenses, certificates and approvals (including certificates of fitness, certificates of loading, RUC license, transport service licenses and certificates of competency);

6.6 immediately notify the Owner (and provide full details) of any theft, loss, damage, breakdown or defect of or to the Equipment and any death, injury or other notifiable event (as that term is defined in the Health & Safety at Work Act 2015) involving the Equipment, and follow any instructions received from the Owner relating to the Equipment, including any instruction to return the Equipment to the Owner;

6.7 before each occasion that the Equipment is used, check that the oil, fuel, tyre pressure and other consumable or wearing items are at acceptable levels for use;

6.8 supply at the Customer's expense all oil, fuel, water and other materials required to operate the Equipment in accordance with these terms and conditions;

6.9 ensure that the Equipment is kept clean and properly maintained in accordance with the requirements referred to in clause 6.3, provided that the Customer will immediately notify the Owner if the Equipment requires any repairs or maintenance other than that referred to in clauses 6.6 and 6.7, will not attempt any such repairs or maintenance itself (unless the Owner expressly agrees otherwise in writing) and will make the Equipment available to the Owner to carry out such repairs or maintenance;

6.10 return the Equipment to the Owner's premises; or, if the Owner has agreed to collect the Equipment, make the Equipment available for collection; no later than the last day of the agreed hire period, clean and in the same order and condition as at the commencement of the hire (fair wear and tear excepted), including all fuel, oil and other lubricants and materials replaced;

6.11 pay to the Owner on demand the cost (at the Owner's usual rates) of any cleaning, repair or maintenance work that the Owner, in its sole discretion, considers necessary to restore the Equipment to the condition required by clause 6.9;

6.12 keep the Equipment in its possession and control at the premises specified in the Contract (or at such other premises as the Owner expressly agrees in writing), free from any lien, security interest, charge or encumbrance of any kind (other

than in favour of the Owner) and all legal processes and not permit or allow any other person other than the Owner to acquire any right whatsoever in connection with the Equipment;

6.13 not alter, remove or make any addition or modification to the Equipment (nor permit or allow the same) including, but without limitation defacing or erasing any identifying mark or number on or in the Equipment;

6.14 ensure that the Equipment is so far as reasonably possible adequately secured and protected against and not exposed to damage from fire, theft or any other avoidable risk;

6.15 on request from the Owner or its authorised representatives at any time, present the Equipment for inspection and testing;

6.16 ensure that all fines, penalties, traffic infringement notices or other charges incurred in relation to the Customer's possession or use of the Equipment are immediately paid; and

6.17 indemnify the Owner from and against any loss, cost, liability, claim or expense (including legal costs on a solicitor-client basis) suffered or incurred by the Owner in connection with the Customer's possession or use of the Equipment or any failure by the Customer to fully and properly comply with any of its obligations under these terms and conditions.

7 Hirer responsible for damage

7.1 The Customer is fully responsible and liable for, and indemnifies the Owner from and against, any loss, cost, liability, claim or expense (including legal costs on a solicitor-client basis and lost revenue while the Equipment is being repaired or replaced) suffered or incurred by the Owner in connection with any theft, loss or damage of the Equipment which occurs at any time during the hire period, howsoever caused.

7.2 The Customer must, at its own cost, insure the Equipment for its full replacement value against fire, theft, loss or damage from all usual risks throughout the hire period and provide the Owner with written evidence of such insurance cover which notes the Owner's interest in the Equipment, names the Owner as an additional insured and which is otherwise satisfactory in all respects to the Owner in its sole discretion.

8 Limitation of liability

8.1 Other than as expressly set out in these terms and conditions, all representations, warranties and conditions whether express or implied and whether statutory or otherwise are expressly excluded (including, without limitation, warranties and covenants for merchantable quality, fitness for purpose and compliance with any description) to the maximum extent permitted by law.

8.2 The Owner is not liable in any manner whatsoever for any loss, damage, cost, expense, claim or liability suffered or incurred by the Customer (or any third party) arising out of the Customer's possession and/or use of the Equipment, however caused.

8.3 If, despite the exclusions and limitations set out above, the Owner is held to be liable in connection with the Equipment or these terms and conditions, the Owner's liability (whether in contract, tort or otherwise) shall be limited to the aggregate hire charges paid by the Customer in the 3 months preceding the date on which the event giving rise to the liability occurred. In no event shall the Owner be liable (whether in

contract, tort or otherwise) for any loss (whether direct or indirect) of profits, business, anticipated savings or other economic loss or for any delay, indirect, special or consequential loss, even if the Owner was or should have been aware of the likelihood of such loss.

8.4 If the Equipment is hired by the Customer for the purposes of a trade, the Customer agrees that the provisions of the Consumer Guarantees Act 1993 will not apply.

9 Breach or default

9.1 If:

(a) the Customer fails to comply with any of the provisions of these terms and conditions (or any other agreement with the Owner);

(b) the Customer suffers any bankruptcy or insolvency event (including, without limitation, the appointment of (or the taking of any preliminary step for the appointment of) any receiver, liquidator, administrator or statutory manager, the entry into any assignment, arrangement or composition for the benefit of creditors generally, or an inability to pay debts as they fall due);

(c) the Owner believes that the Equipment, or the Customer's creditworthiness or ability or willingness to comply with its obligations under these terms and conditions, may be at risk for any reason whatsoever;

(d) any of the above events occur in relation to any guarantor of the Customer's obligations under these terms and conditions; or

(e) the Equipment is damaged or destroyed, then without limiting any other right or remedy the Owner may have, the Owner may suspend or terminate the hire of any or all Equipment on notice with immediate effect.

9.2 On suspension or termination of any hire, the Customer will immediately:

(a) deliver the Equipment to the Owner (or as the Owner directs), or where applicable make the Equipment available for collection by the Owner, in the condition required by clause 6.9;

(b) pay all amounts due to the Owner at the date of such suspension or termination, together with the balance of all hire charges that would have been payable for the remainder of the hire period (discounted for early payment by such amount as the Owner determines in its sole discretion).

9.3 If Customer does not immediately comply with clause 9.2(a), the Owner may recover the Equipment by any means necessary and clause 5.4 shall apply.

10 Risk and ownership

10.1 The risk of loss or damage to the Equipment shall pass to the Customer at the commencement of the hire period (including where the Owner has agreed to transport the Equipment pursuant to clause 5.1).

10.2 The Owner will at all times retain ownership of the Equipment and the Customer will not acquire any right, title or interest in the Equipment other than the rights as a bailee to use the Equipment in accordance with these terms and conditions.

11 Security

11.1 As security for the performance by the Customer of its obligations under these terms and conditions, the Customer grants, in favour of the Owner, a security interest in all of the Customer's present and after acquired personal property on the terms and conditions set out in the current version of the Auckland District Law Society ("ADLS") General Security Agreement (a copy of which is available on request). In addition, the hire of the Equipment may, despite clause 4.2, give rise to a deemed security interest in the Equipment and its proceeds in accordance with the Personal Property Securities Act 1999 ("PPSA"). The Customer must do anything (including obtaining consents and signing documents) which the Owner requires to enable the Owner to register, perfect, maintain a first ranking priority position in, and enforce, such security interests. To the maximum extent permitted by applicable law, the parties agree that:

(a) the Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to those security interests;

(b) the Customer waives its rights and, with the Owner's agreement, contracts out of the Customer's rights under the sections referred to in section 107(2) of the PPSA; and

(c) nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to those security interests or these terms and conditions.

11.2 The Customer grants a mortgage in favour of the Owner over any property owned by the Customer from time to time as security for the performance by the Customer of its obligations under these terms and conditions. The mortgage will be an unregistered (i.e. equitable) mortgage on the current version of the ADLS "all obligations" mortgage form (a copy of which is available on request), and will support a caveat over the relevant property. In the event of default under the mortgage, the Lender will be entitled to register the mortgage.

12 Privacy

12.1 The Owner may collect and hold personal information about the Customer from any source the Owner considers appropriate (including, without limitation, any GPS device installed on the Equipment) for the purposes of providing credit to the Customer, administration, marketing, determining the Customer's compliance with clause 7.2 and any other purpose relating to the hire of the Equipment. The Customer authorises the Owner to disclose personal information to any third party in connection with any such purposes.

12.2 The Customer has a right of access to, and may request correction of, personal information held by the Owner about the Customer. If a privacy breach occurs which has caused or may cause serious harm to the Customer, the Owner will notify the Customer of this as soon as practicable either directly or, if that is not reasonably practicable, by public notice.

13 General

13.1 These terms and conditions, together with any relevant credit application, Contract and invoice, constitute the entire agreement between the parties for the hire of the Equipment and supersede and exclude any previous agreement, arrangement or understanding on such matters, any terms or

documents submitted by the Customer and any terms implied by trade, custom, practice or course of dealing.

13.2 The Owner may amend these terms and conditions, or the term of any Contract from time to time by notice in writing to the Customer or by displaying the updated terms and conditions on the Owner's website. The amended terms shall immediately apply to all new hires of Equipment. The amended terms shall apply to all existing hires of Equipment 30 days after the terms are amended in accordance with this clause, unless the Customer notifies the Owner in writing that it does not accept the amended terms. Unless the Owner agrees otherwise, the Customer's sole remedy for not accepting the amended terms shall be to return the existing hired Equipment within 14 days of the terms being amended in accordance with this clause.

13.3 The Customer may not assign or transfer any of its rights or obligations to any person without the prior written consent of the Owner. The Owner may at any time assign any of its rights, or transfer any of its obligations to any person.

13.4 No delay or failure of the Owner to exercise its rights under these terms and conditions operates as a waiver of those rights. A partial exercise of rights by the Owner does not prevent their further exercise in the future.

13.5 If a court decides that part of these terms and conditions is unenforceable, the part concerned will be deleted from the rest of these terms and conditions which will then continue in force.

13.6 The Owner is not liable for any loss, damage, delay or failure to perform its obligations under these terms and conditions if that loss, damage, delay or failure results from anything beyond the Owner's reasonable control.

13.7 Any dispute or difference arising out of or in connection with these terms and conditions which cannot be resolved by negotiation may be referred by the Owner to arbitration under the Arbitration Act 1996 (NZ) in Blenheim, New Zealand (unless the parties agree otherwise in writing) before an arbitrator agreed between the parties or, failing agreement, appointed by the President of the New Zealand Law Society. To avoid doubt, this clause shall not apply to any failure by the Customer to pay any undisputed amount for which the Company may issue proceedings in any court of competent jurisdiction.

13.8 These terms and conditions will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters.

13.9 The Customer may sign any Contract or any other document that incorporates these terms and conditions, by way of the application of the Customer's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017. Where the Customer applies an electronic signature to any Contract or any other document that incorporates these terms and conditions in accordance with this clause:

(a) the Customer confirms that such method of signing is reliable and conclusive of the Customer's intention to be legally bound by these terms and conditions;

(b) the Owner is able to rely on such electronic signature as if the Customer had signed the Contract or any other document that incorporates these terms and conditions by

manuscript signature in accordance with all legal requirements; and

(c) the Owner acknowledges that by accepting or acknowledging receipt of copies of any Contract or any other document that incorporates these terms and conditions with the Customer's electronic signature, they are consenting to the use of the Customer's electronic signature.