

**1. Definitions**

- 1.1 **“Charges”** means the Charges payable (plus any Goods and Services Tax (“GST”) where applicable) for the Equipment as agreed between the Supplier and the Client in accordance with clause 7 below.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.5 **“Dry Hire”** means that the Equipment is supplied by the Supplier without an operator.
- 1.6 **“Equipment”** means all Equipment (including any accessories, all parts, components, machines, products, units, and materials whether separate or attached to something) supplied on hire (or purchase) to the Client by the Supplier, at the Client’s request from time to time, and:
- (a) includes any erection, dismantling, transport, design, manufacture, supply, production, hire, installation, advice, repairs, and maintenance of the Equipment (**“Services”**), supplied by the Supplier to the Client, either separately or deposited incidentally by the Supplier in the course of the Supplier conducting, or supplying to the Client, the Equipment or supplying any labour; and
  - (b) where the context so permits the terms ‘Equipment’ or ‘Services’ shall be interchangeable for the other.
- 1.7 **“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.
- 1.8 **“Site”** means the address nominated by the Client at which the Services are to be undertaken (or where the Equipment is to be located) by the Supplier Services.
- 1.9 **“Supplier”** means Livewire Audio Visual Limited, its successors and assigns.
- 1.10 **“Wet Hire”** means that the Equipment is supplied by the Supplier with an operator, who shall at all times remain an employee or representative of the Supplier.

**2. Interpretation**

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
  - (c) the words ‘include’ and ‘including’, and any variants of those words, will be treated as if followed by the words ‘without limitation’; and
  - (d) a reference to dollars (\$), is a reference to New Zealand currency;
  - (e) this Contract is not to be interpreted against the Supplier merely because they prepared this Contract;
  - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity, or discrepancy in this Contract:
    - (i) terms and conditions; and
    - (ii) any schedules.
  - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement, or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

**3. Acceptance**

- 3.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Equipment and provision of the Services.
- 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges and accepts that:
- (a) the supply of Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account. In the event that the supply of Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery;
  - (b) none of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of the Supplier, which may be arbitrarily withheld;
  - (c) the Supplier reserves the right to refuse to enter the Site to undertake the Services in the event that the Supplier believes the Site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the Site is made safe before the Supplier will enter the Site, the Supplier shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe Site;
  - (d) in the event that the Client requests the Supplier to make a call-out to carry out any Services, then the Supplier reserves the right to charge a minimum call-out fee based on the Supplier’s hourly labour rate, (penalty rates may apply for weekends and/or Public Holidays, unless otherwise agreed between the Supplier and the Client), plus travel and parts; and

- (e) off-hire receipts will only be issued when the Equipment has been either collected by the Supplier or returned to the Supplier's premises.
- 3.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**4. Authorised Representatives**

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Equipment or Services on the Client's behalf and/or to request any variation to the Services or Equipment on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Equipment, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

**5. Errors and Omissions**

- 5.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- 5.2 If such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
  - (b) shall not be responsible for any additional costs incurred by the Supplier arising from the error or omission.

**6. Change in Control**

- 6.1 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 and contact phone or fax number/s, change of trustees 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.

**7. Charges and Payment**

- 7.1 At the Supplier's sole discretion, the Charges shall be either:
- (a) be either:
    - (i) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied; or
    - (ii) the Supplier's quoted Charges (subject to clause 7.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier's quotation within fourteen (14) days; and
  - (b) not include, unless specified otherwise in writing:
    - (i) the mobilisation, demobilisation, and commissioning of the Equipment; and
    - (ii) service and maintenance of, and damage to, the Equipment, which is the responsibility of the Client; or
  - (c) the Supplier's quoted Charges (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days. The quoted Charges is subject to change after a Site visit.
- 7.2 The Supplier reserves the right to change the Charges:
- (a) if a variation to the Equipment or Services which are to be supplied is requested and prior to commencement of additional Services, the Client must provide an order number; and/or
  - (b) in the event of increases to the Supplier in the cost of labour or materials, fluctuations in currency exchange rates, out of pocket expenses (including, but not limited to, agency fees, freight, additional Site visits, or labour costs which shall be determined on actual hours spent) which are beyond the Supplier's control.
- 7.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 7.4 At the Supplier's sole discretion, a reasonable deposit may be required.
- 7.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on or before delivery of the Equipment;
  - (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) 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.
- 7.6 A storage fee shall become due and payable per week or part week for any Equipment that remains on the Client's premises sixty (60) days after the Supplier has notified the Client that the Services are complete.
- 7.7 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Supplier.
- 7.8 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and

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allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.

- 7.9 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.10 The Client acknowledges and agrees that the Client's obligations to the Supplier for the supply of the Equipment and the Services shall not cease until:
- (a) the Client has paid the Supplier all amounts owing for the hire of the Equipment; and
  - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
- 7.11 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, and until then the Supplier's rights in relation to the Equipment and Services, and this Contract, shall continue.
- 7.12 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale 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 Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

### 8. Other Charges

- 8.1 In addition to the Charges, the Client will be required to pay to the Supplier, immediately upon request:
- (a) for any consumables, fuel or trade materials supplied to the Client by the Supplier;
  - (b) where applicable, the costs of delivering, mobilisation, demobilisation, commissioning and/or collecting the Equipment (as per clause 9.1);
  - (c) for repairs and maintenance carried out by the Supplier at the Client's request;
  - (d) all costs:
    - (i) incurred in cleaning and/or repairing the Equipment where the Equipment is not returned in good working order (including damage caused by undue wear and tear, such as damaged due to rough loading or handling, neglect by the Client of maintenance and servicing, dust related electric failure;
    - (ii) of repairing any damage caused by the ordinary use of the Equipment.
  - (e) the cost of repairing any damage to the Equipment caused by:
    - (i) the negligence of the Client or the Client's agent;
    - (ii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
  - (f) the new list price of any Equipment that are for whatever reason destroyed, written off or not returned to the Supplier;
  - (g) any:
    - (i) lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
    - (ii) insurance excess payable in relation to a claim made by either the Client or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Supplier's;
    - (iii) consequential damage or loss, howsoever arising, suffered by the Supplier as a result of the Client's breach of any of these terms and conditions;
    - (iv) relocation of the Equipment shall attract an additional charge, however, subject firstly to the Supplier's approval.

### 9. Delivery of Equipment

- 9.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Equipment at the Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 9.2 The cost of Delivery is either included in the Charges or is in addition to the Charges as agreed between the parties.
- 9.3 Any time specified by the Supplier for Delivery of the Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9.4 The Supplier shall not be responsible for delay or non-completion of the job for which the Equipment is hired resulting from an act beyond the reasonable control of the Supplier, including, but not limited to, industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather ("**Force Majeure**") as stated in clause 28.

### 10. Dimensions, Plans and Specifications

- 10.1 All literature, samples, specifications, dimensions, and weights submitted with the quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with Equipment and Services the Supplier supplies, and the Supplier reserves the right to supply Equipment that have minor modifications in specifications as the Supplier sees fit.
- 10.2 In the event the Client gives information relating to the Equipment (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Client):
- (a) that it is the Client's responsibility to verify the accuracy of the information before the Client or the Supplier places an order based on the information. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause; and
  - (b) the Supplier shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Equipment required due to inaccurate plans provided by the Client, such additional Services shall be charged in accordance with clause 7.2.

**11. Risk**

- 11.1 Risk of damage to or loss of the Equipment passes to the Client on Delivery and the Client must insure the Equipment on or before Delivery.
- 11.2 If any of the Equipment 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 Equipment. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 11.3 If the Client requests the Supplier to leave Equipment outside the Supplier's premises for collection or to deliver the Equipment to an unattended location, then such Equipment shall be left at the Client's sole risk.
- 11.4 The Client warrants that any structures to which the Equipment is to be installed or placed are able to withstand the installation of the Equipment and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Equipment once installed. If, for any reason (including the discovery of defective or unsafe wiring), the Supplier reasonably forms the opinion that the Client's Site is not safe for the installation of Equipment to proceed then the Supplier shall be entitled to delay installation of the Equipment until the Supplier is satisfied that it is safe for the installation to proceed.
- 11.5 It is the Client's responsibility to provide the Supplier, while at the Site, with adequate access to utility services and cables and inputs are marked and easily visible. The Supplier shall not be responsible for any unforeseen loss and damage.

**12. Compliance with Laws**

- 12.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services and Equipment, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services and Equipment.

**13. Access**

- 13.1 The Client shall ensure that the Supplier always has clear and free access to the Site to enable them to deliver the Equipment and provide the Services. The Supplier shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 13.2 Where the Contractor requires that Equipment for the Services be stored or are assembled at the Site, the Client shall supply the Supplier a safe area for storage and shall take all reasonable efforts to protect all Equipment from destruction, theft, or damage. In the event that any of the Equipment is destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

**14. Use, Operation and Maintenance of the Equipment**

- 14.1 Hire charges shall commence from the time the Equipment been picked of or Delivery has taken place and/or the Equipment has started to be used legally and shall continue until the return of the Equipment thereto, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 14.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 14.3 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.
- 14.4 Stand down:
  - (a) will only be applicable where agreed to in writing between the parties prior to the commencement of the hire term. Otherwise, any request by the Client to the Supplier will be, in the first instance, orally and confirmed in writing for consideration by the Supplier. Adjustment to the hire charges will be made on the merit of such request, and only in accordance with this clause;
  - (b) is usually charged to the Client at fifty percent (50%) of the daily hire charges, unless otherwise agreed in writing between the parties prior to the stand down.
- 14.5 The Client shall:
  - (a) maintain the Equipment as is required by the Supplier;
  - (b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown, accident, or damage due by rain, wind cyclone etc and may at the Supplier's discretion be subject to an inspection, an additional charge will apply. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (c) satisfy itself at commencement that the Equipment are suitable for its purposes;
  - (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 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) comply with all WorkSafe health and safety laws relating to the Equipment and their operation;
  - (g) not move the Equipment once placed in position by the Client, except with the express approval of the Supplier. Any relocation of the Equipment shall attract an additional charge, and all risk for the performance of such shall rest with the Client (as per clause 8);
  - (h) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (i) 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;
  - (j) 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;
  - (k) will not remove the Equipment from the Site without the prior written approval of the Supplier;
  - (l) 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;
  - (m) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
  - (n) not exceed the recommended or legal load and capacity limits of the Equipment;

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- (o) not use or carry any illegal, prohibited or dangerous substance in, or on, the Equipment;
  - (p) not fix any of the Equipment in such a manner as to make them legally a fixture forming part of any freehold.
- 14.6 The Supplier may terminate the hire contract, without being liable for damages for doing so, if:
- (a) the Client defaults in the punctual payment of any monies due;
  - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
  - (c) the Client fails to observe or perform any condition in this, or any other uncompleted hire contract between the Supplier and the Client;
  - (d) the Client is declared bankrupt, or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed to any of the Client's assets;
  - (e) the Client applies to take benefit of any law for the relief of bankrupt or insolvent debtors, compounds with their creditors, or makes an assignment of their remuneration for their benefit.
- 14.7 In the circumstances of clause 14.6 the Supplier shall be entitled to enter upon the Client's Site and remove the Equipment from the Site without prejudice to any arrears in hire charges or other sums due to the breach if the Client's obligations or for damages that may arise from any event, and from then the Supplier shall be freed and discharged from all actions, suits, claims, demands by or obligations to the Client under or by virtue where this Contract is for the purpose of hire.
- 15. Wet Hire**
- 15.1 The Client shall:
- (a) be responsible for ensuring that the Supplier notified of the location of any underground services on the Site; and
  - (b) provide amenities and first aid services to the Supplier's employees in compliance with all applicable health and safety legislation in operation where the services are undertaken.
- 15.2 Should it be necessary for the Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment and said costs shall be in addition to the Charges.
- 15.3 Notwithstanding that the operator of the Equipment is an employee or representative of the Supplier, the operator shall operate the Equipment in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 15.4 In the event the Client requires an employee of the Supplier to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period, notwithstanding that the Equipment is not being operated during such time. If any induction is undertaken outside of the hire period, then the Client shall be liable to pay the Supplier's standard (and/or overtime, if applicable) hourly labour rate.
- 16. Title to the Equipment**
- 16.1 The Equipment is and will at all times remain the absolute property of the Supplier, however the Client accepts full responsibility for:
- (a) 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; and
  - (b) 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, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 16.2 Furthermore, the Client will insure, or self-insure, the Supplier'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 affect 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.
- (a) 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; and
  - (b) 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.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Equipment that have previously been supplied and that will be supplied in the future by the Supplier to the Client, and the proceeds from such Equipment as listed by the Supplier to the Client in invoices rendered from time to time.
- 17.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment or the proceeds of such Equipment in favour of a third party without the prior written consent of the Supplier; and
  - (d) immediately advise the Supplier of any material change in its business practices of selling the Equipment which would result in a change in the nature of proceeds derived from such sales.
- 17.3 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.
- 17.4 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 17.1 to 17.3.

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- 17.5 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17.6 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 17 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 17 will apply generally for the purposes of the PPSA.
- 18. Security and Charge**
- 18.1 In consideration of the Supplier agreeing to supply the Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 18.2 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.
- 18.3 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 18 including, but not limited to, signing any document on the Client's behalf.
- 19. Defects**
- 19.1 The Client shall inspect the Equipment on Delivery (which may include set-up and operation of the Equipment) and shall within three (3) hours 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 Equipment within a reasonable time following Delivery if the Client believes the Equipment or Services are defective in any way. If the Client fails to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Equipment or repairing the Equipment.
- 20. Warranty**
- 20.1 For Equipment not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Equipment. 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 Equipment.
- 21. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 21.1 If the Client is acquiring Equipment for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Equipment by the Supplier to the Client.
- 21.2 The Supplier agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
- 22. Intellectual Property**
- 22.1 Where the Supplier has designed, drawn, or developed Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 22.2 The Client warrants that all designs, specifications, or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design, or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 22.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, or Equipment which the Supplier has created for the Client.
- 23. Default and Consequences of Default**
- 23.1 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.
- 23.2 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).
- 23.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 23 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 23.4 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:
- 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;
  - the Client has exceeded any applicable credit limit provided by the Supplier;
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**24. Cancellation**

- 24.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Equipment to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 24.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Equipment and/or Services to the Client, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Equipment and/or Services at any time before the Equipment and/or Services 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 Equipment and/or Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 24.3 The Client may cancel Delivery of the Equipment and/or Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Client to otherwise accept Delivery of the Equipment and/or Services shall place the Client in breach of this Contract.
- 24.4 In the event of premature termination of the hire period the Client shall:
- (a) forfeit any deposit or bond paid where the appropriate notice (as per clause 24.3) is not received; and
  - (b) be responsible for the immediate payment of the following sums:
    - (i) all current invoices due and payable up to the date of termination; and
    - (ii) all other sums owing by the Client under this Contract (or any other contract with the Client) as a result of the default and termination of this Contract, including consequential damages for the loss of bargain and all loss, costs, charges and expenses incurred by the Supplier in connection with (and resulting from) the premature termination of this Contract.
- 24.5 Cancellation of indent and special orders for 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.

**25. Privacy Policy**

- 25.1 All emails, documents, images, or other recorded information held or used by the Supplier is "**Personal Information**" as defined and referred to in clause 25.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information").
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.3 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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.
- 25.4 Where the Client is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 25.5 The Client shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 25.6 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 25.7 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

**26. Service of Notices**

- 26.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

- (e) if sent by email to the other party's last known email address.
- 26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 27. Trusts**
- 27.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust fund or trust property.
- 28. Force Majeure**
- 28.1 Where the Supplier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Supplier, including, but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed boarder lockdowns (including, worldwide destination ports), etc. ("**Force Majeure**") to carry out any obligation under this Contract and the Supplier gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts, or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Supplier.
- 28.2 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 29. Employees of the Supplier**
- 29.1 The Client agrees that during the term of the Contract and for twelve (12) months following the termination of the Contract for any reason, the Client will not attempt to canvass, solicit, entice, encourage, or persuade any contractor/s, employee, or consultant of the Supplier's to terminate their contract or employment with the Supplier.
- 29.2 The Client agrees that if clause 29.1 is contravened the Supplier will be able to invoice the Client at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this Contract.
- 30. General**
- 30.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 30.2 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 Auckland, New Zealand.
- 30.3 Subject to the CGA, the liability of the Supplier and the Client under this Contract shall be limited to the Charges.
- 30.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 30.5 The Client cannot licence or assign without the written approval of the Supplier.
- 30.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 30.7 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Equipment and/or Services to the Client.
- 30.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.