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Definitions

- 1.1 "Timaru Hire" shall mean Timaru Hire Limited, its successors and assigns or any person acting on behalf of and with the authority of Timaru Hire Limited.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by the Timaru Hire to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Timaru Hire to the Client.
- 1.4 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Timaru Hire to the Client.
- 1.5 "Price" shall mean the cost of the hire of the Equipment as agreed between the Timaru Hire and the Client subject to clause 4 of this contract.

1. Acceptance

- 1.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Equipment.
- 1.2 These terms and conditions may only be amended with the Timaru Hire's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Timaru Hire.

2. Change in Control

- 2.1 The Client shall give the Timaru Hire not less than fourteen (14) days prior written notice of any proposed change of Timaru ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Timaru Hire as a result of the Client's failure to comply with this clause.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Timaru Hire as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to authorise the hire of any Equipment on the Client's behalf and/or to request any variation thereto on the Client's behalf (such authority to continue until all requested hire agreements have been completed or the Client otherwise notifies Timaru Hire in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Timaru Hire in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Timaru Hire for all additional costs incurred by Timaru Hire (including Timaru Hire's profit margin) in providing any works, materials, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Price and Payment

- 4.1 At the Timaru Hire's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Timaru Hire to the Client in respect of Equipment supplied; or
 - (b) the Timaru Hire's current Price, at the date of delivery of the Equipment, according to the Timaru Hire's current price list; or
 - (c) the Timaru Hire's quoted price (subject to clause 4.2) which shall be binding upon the Timaru Hire provided that the Client shall accept the Timaru Hire's quotation in writing within thirty (30) days.
- 4.2 Timaru Hire reserves the right to change the Price if a variation to Timaru Hire's quotation is requested. Any variation from the arranged hire (including, but not limited to, extension of hire period) will be charged for on the basis of Timaru Hire's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Timaru Hire's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Timaru Hire, which may be:
 - (a) on delivery of the Equipment;
 - (b) before delivery of the Equipment;
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or

- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Timaru Hire.
- 4.5 Payment may be made by cash, cheque (at Timaru Hire's sole discretion), bank cheque, electronic/on-line banking, credit card (Visa only), or by any other method as agreed to between the Client and the Timaru Hire.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Timaru Hire an amount equal to any GST the Timaru Hire must pay for any supply by the Timaru Hire under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7 Receipt by the Timaru Hire 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.

5. Hire Period

- 5.1 The Hire Period of the Equipment shall be either:
- (a) Timaru Hire's Minimum Hire Period;
 - (b) on a half day (4 hour) basis;
 - (c) on a weekly basis;
 - (d) on a monthly basis; or
 - (e) on an events basis, which shall be specified on the Seller's quotation or any other applicable form.
- 5.2 Hire Charges shall commence from the time the Equipment departs from Timaru Hire's premises and will continue until the return of the Equipment to Timaru Hire's premises, and/or until the expiry of the specified Hire Period, whichever last occurs.
- 5.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 5.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless Timaru Hire confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Timaru Hire 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.

6. Delivery

- 6.1 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 Timaru Hire's address; or
 - (b) the Timaru Hire (or the Timaru Hire's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 6.2 At the Timaru Hire's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Equipment whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Equipment as arranged then the Timaru Hire shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Any time or date given by the Timaru Hire to the Client is an estimate only. The Client must still accept delivery of the Equipment even if late and the Timaru Hire will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Access

- 7.1 Where applicable:
- (a) the Client shall ensure that Timaru Hire has clear and free access to the work site at all times to enable them to deliver the Equipment. Timaru Hire 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 Timaru Hire.
 - (b) it is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify Timaru Hire against all costs incurred by Timaru Hire in recovering such vehicles and/or Equipment in the event they become bogged or otherwise immovable.

8. Risk

- 8.1 The Timaru Hire retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on delivery.
- 8.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Timaru Hire 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.
- 8.3 The Client will insure, or self-insure, the Timaru Hire'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 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.
- 8.4 The Client accepts full responsibility for and shall keep the Timaru Hire 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.

9. Title

- 9.1 The Equipment is and will at all time remain the absolute property of the Timaru Hire.
- 9.2 If the Client fails to return the Equipment to the Timaru Hire then the Timaru Hire or the Timaru Hire'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.
- 9.3 The Client is not authorised to pledge the Timaru Hire's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 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 previously supplied by the Timaru Hire to the Client (if any) and all Equipment that will be supplied in the future by the Timaru Hire to the Client.
- 10.2 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 Timaru Hire 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 Timaru Hire 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 a financing change statement or a change demand without the prior written consent of the Timaru Hire.
- 10.3 The Timaru Hire and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Timaru Hire, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by the Timaru Hire under clauses 10.1 to 10.5.

11. Security and Charge

- 11.1 In consideration of the Timaru Hire 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, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Timaru Hire from and against all the Timaru Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Timaru Hire's rights under this clause.
- 11.3 The Client irrevocably appoints the Timaru Hire and each director of the Timaru Hire as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Client's Responsibilities

- 12.1 The Client shall:
 - (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to Timaru Hire upon request;
 - (c) maintain the Equipment as is required by Timaru Hire (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
 - (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
 - (e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Timaru Hire relating to any such matters or occurrences;
 - (f) not carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of Timaru Hire;
 - (g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));

- (h) refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
 - (i) notify Timaru Hire immediately by telephone of the full circumstances of any theft, vandalism, mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (j) notify the Police immediately in the event the Equipment is stolen or vandalised or for any reason that should be notified to the Police;
 - (k) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (l) 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 Timaru Hire or posted on the Equipment;
 - (m) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (n) 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 Timaru Hire (or Timaru Hire's designated employee);
 - (o) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
 - (p) 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;
 - (q) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (r) immediately notify Timaru Hire should the Equipment become bogged or stuck (refer also 7.1(b)).
- 12.2 Immediately on request by Timaru Hire the Client will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Timaru Hire;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Timaru Hire's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (f) the cost of fuels and consumables provided by Timaru Hire and used by the Client;
 - (g) any costs incurred by Timaru Hire in picking up and returning the Equipment to Timaru Hire's premises if the Client does not return the Equipment to Timaru Hire's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.
 - (h) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (i) any insurance excess payable in relation to a claim made by either the Client or Timaru Hire 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 Timaru Hire's.

13. Defects

- 13.1 The Client shall inspect the Equipment on delivery and shall within forty eight (48) hours notify the Timaru Hire of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Timaru Hire an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Timaru Hire has agreed in writing that the Client is entitled to reject, the Timaru Hire's liability is limited to replacing the Equipment.

14. Warranty

- 14.1 No warranty is given by the Timaru Hire as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless the Timaru Hire in respect of all claims arising out of the use of the Equipment.

15. Wet Hire

- 15.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of Timaru Hire.
- 15.2 In the event of Wet Hire of the Equipment the operator of the Equipment remains an employee of Timaru Hire and operates the Equipment in accordance with the Client's instructions. Timaru Hire shall not be liable for any actions of the operator in following the Client's instructions.
- 15.3 The Client and Timaru Hire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

16. Consumer Guarantees Act 1993

16.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

17. Default and Consequences of Default

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Timaru Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes the Timaru Hire any money the Client shall indemnify the Timaru Hire from and against all costs and disbursements incurred by the Timaru Hire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Timaru Hire's collection agency costs, and bank dishonour fees).

17.3 Without prejudice to any other remedies the Timaru Hire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Timaru Hire may suspend or terminate the supply of Equipment to the Client. The Timaru Hire will not be liable to the Client for any loss or damage the Client suffers because the Timaru Hire has exercised its rights under this clause.

17.4 Without prejudice to the Timaru Hire's other remedies at law the Timaru Hire shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Timaru Hire shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Timaru Hire becomes overdue, or in the Timaru Hire's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

18.1 The Timaru Hire may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Timaru Hire shall repay to the Client any sums paid in respect of the Price. The Timaru Hire shall not be liable for any loss or damage whatever arising from such cancellation.

18.2 In the event that the Client wishes to cancel this agreement then the Client shall be liable for any loss incurred by the Timaru Hire (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.

19. Privacy Act 1993

19.1 The Client authorises the Timaru Hire or the Timaru Hire's agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by the Timaru Hire from the Client directly or obtained by the Timaru Hire from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

19.3 The Client shall have the right to request the Timaru Hire for a copy of the information about the Client retained by the Timaru Hire and the right to request the Timaru Hire to correct any incorrect information about the Client held by the Timaru Hire.

20. General

20.1 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.

20.2 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 New Zealand.

20.3 The Timaru Hire shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Timaru Hire of these terms and conditions.

20.4 In the event of any breach of this contract by the Timaru Hire the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Timaru Hire exceed the Price of the Equipment.

20.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Timaru Hire.

20.6 The Timaru Hire may license or sub-contract all or any part of its rights and obligations without the Client's consent.

- 20.7 The Timaru Hire reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Timaru Hire notifies the Client of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.9 The failure by the Timaru Hire to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Timaru Hire's right to subsequently enforce that provision.