



Terms and Conditions

1. Definitions

- 1.1** In this Agreement, the following terms have the meanings given below, unless the context otherwise requires:
- "Agreement"** means both the front page of this agreement (including the Schedule) and these terms and conditions.
- "Equipment"** means the Equipment described in Item 1 of the Schedule to this Agreement hired to you by the Owner and includes all accessories and other goods or Equipment of the Owner attached to or used in connection with the Equipment.
- "GST"** means goods and services tax in terms of the Goods and Services Tax Act 1985, at the prevailing rate from time to time.
- "persons under your control"** means your employees and agents and any other person who may be at any time under your control or direction including but not limited to, the Designated Operator, subcontractors, independent contractors and their employees or agents.
- "Term"** means the term of the hire of the Equipment commencing at the time and on the date, and ending at the time and on the date, in each case as set out in Item 3, unless terminated earlier in accordance with the terms of this Agreement.
- 1.2** Any term defined in the Schedule, has that meaning throughout this Agreement.
- 1.3** Headings are inserted for convenience and shall not affect the interpretation of this Agreement. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include any other gender. A reference to a clause or subclause is a reference to a clause or subclause of this Agreement. A reference to the Owner includes its employees and agents.
- 1.4** The rule of construction known as the contra proferentem rule does not apply to this Agreement.
- 1.5** A reference to a statute includes:
- (a)** all regulations, orders, rules or notices made pursuant to that statute;
 - (b)** all amendments to that statute and those regulations, orders, rules or notices; and
 - (c)** any statute passed in substitution of that statute.

2. Term

- 2.1** The hire of the Equipment is fixed for the Term, unless terminated earlier in accordance with this Agreement.
- 2.2** Unless otherwise agreed with the Owner, you shall be responsible for collecting the Equipment at the premises designated by the Owner in Item 2 of the Schedule at the commencement of the Term.
- 2.3** You shall not be entitled to a refund or reduction of the Hire Charge specified in Item 4 of the Schedule if you choose to return the Equipment to the Owner before the end of the Term.
- 2.4** You agree that the Owner may charge you additional Hire Charge on a pro rata basis for any Equipment not returned to the Owner at the end of the Term, without limiting the Owner's rights in clause 8.

3. Charges

- 3.1** The Hire Charge for the Equipment is set out in Item 4 of the Schedule, subject to the terms of this Agreement.
- 3.2** GST is payable in addition to all payments and charges specified as being payable by you under this Agreement.
- 3.3** Unless the Owner agrees otherwise, you shall pay the Hire Charge in full to the Owner prior to collecting the Equipment [**payment by credit card** with such payment to be made using the credit card specified in Item 9 of the Schedule].
- 3.4** If a Bond amount is stated in Item 5 of the Schedule you are required to pay the amount of the Bond to the Owner at the commencement of the Term in addition to the Hire Charge. The Owner shall refund the Bond to you in full provided that you return the Equipment in good condition to the Owner immediately at the end of the Term. If the Equipment are not returned, or are returned late, or not in good condition, the Owner is entitled to retain the Bond or any part of it and may also require you to pay to replace or repair the Equipment, or to pay additional Hire Charges.
- 3.5** Without prejudice to the Owner's other remedies under this Agreement, at law or otherwise, you will pay interest at the Default Interest Rate specified in Item 8 of the Schedule on all amounts owing to the Owner under this Agreement which remain outstanding after the due date for payment, until all outstanding amounts have been paid in full. This provision shall not constitute a waiver of your default and the Default Interest is not an extension of credit to you.
- 3.6** You shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or attempted exercise of any of the Owner's rights or remedies under this Agreement, including commissions and legal costs on a solicitor and client basis.
- 3.7** You must make all payments due under this Agreement without set-off or deduction of any kind.
- 3.8** You acknowledge and accept that by signing this Agreement and by providing a credit card for payment, all charges under this Agreement may be charged to the nominated credit card or to any other credit card that may be provided by you.

4. Ownership and Risk

4.1 You acknowledge that the Equipment remain the property of the Owner at all times and until they are returned to the Owner, subject to clause 5, loss or damage of the Equipment is at your risk.

5. Insurance – Insurance Charge

5.1 Subject to clauses 5.2 and 5.3 below, if you have paid the Insurance Charge specified in Item 6 of the Schedule for the insurance cover provided by the Owner, you will be indemnified up to a limit of \$1500 in respect of damage to any property belonging to any third party and arising out of the use of the each individual Equipment.

5.2 For the avoidance of doubt you acknowledge that even if you pay the Insurance Charge, the Owner's insurance will not cover damage, injury or loss due to:

- (a) mysterious disappearance;
- (b) loss or damage resulting from your negligent acts or omissions;
- (c) the driver being under the influence of alcohol or any drug which affects his or her ability to operate the vehicle;
- (d) the vehicle being unsafe or unroadworthy if that condition arose during the Term and that condition caused or contributed to the loss or damage and the driver was aware or ought to have been aware of the unsafe or unroadworthy condition of the vehicle;
- (e) the vehicle being operated in any speed test, race or contest;
- (f) the vehicle being driven by any person who at the time of driving the vehicle did not have a licence, or was disqualified from holding a licence to drive the vehicle;
- (g) the vehicle being operated outside the Term or any extension of the Term;
- (h) personal belongings of you or any third party being within the vehicle.

5.3 Special conditions or exclusions may apply depending on the nature or location of your use of the Equipment. You must therefore notify the Owner of your intended use for the Equipment and where you will use them prior to collecting the Equipment.

5.4 The Owner requires you to pay the Insurance Charge unless you provide written confirmation of insurance cover of the Equipment on terms suitable to the Owner prior to you collecting the Equipment.

5.5 All claims under the Owner's insurance are subject to an excess charge of \$1500 plus GST which shall be payable by you in addition to the Insurance Charge if applicable.

6. Owner's Undertakings

6.1 The Owner undertakes with you that:

- (a) the Owner will arrange for the Equipment to be available at the commencement of the Term in operational order and with all necessary permits, certificates and licences;
- (b) the Owner is responsible at its cost for all repairs and replacements to the Equipment not caused by any failure by you to properly service or operate the Equipment as required under this Agreement;
- (c) in the case of vehicles, the vehicle will be full of fuel and oil at the commencement of the Term.

7. Your Undertakings

7.1 You undertake with the Owner that you:

- (a) are responsible for all loss or damage whatsoever including the cost of repairs suffered or incurred by the Owner in consequence of any breakdown or damage to the Equipment where such breakdown or damage is caused by any negligent act or omission or misdirection or misuse of the Equipment on your part or by persons under your control to the extent that the Owner's insurance cover does not cover such loss or damage;
- (b) will use only competent appropriately qualified operators to operate the Equipment, and where a Designated Operator is specified in Item 7 of the Schedule, you will ensure that only that person will operate the Equipment, unless the Owner agrees otherwise in writing with you;
- (c) will at your own expense supply all consumables to be supplied by hirer, fuel, oil, grease and other consumables necessary for the operation of the Equipment and in the case of vehicles return the vehicle at the end of the Term full of fuel and oil;
- (d) are responsible, subject to clause 5 (Insurance – Insurance Charge), for any loss or damage to the Equipment from the time you take possession of the Equipment until they are returned to the Owner's possession;
- (e) shall notify the Owner in writing immediately if the Equipment are lost or damaged and shall follow all reasonable instructions of the Owner;

- (f) shall take proper and reasonable care of the Equipment and return them in clean good order and clean condition; this might including water blasting or other means of cleaning
- (g) shall satisfy yourself that the Equipment are suitable for your intended use;
- (h) shall use the Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment;
- (i) shall immediately notify the Owner by telephone if the Equipment break down or in the case of a vehicle if any warning light is activated;
- (j) shall except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring any claim against the Owner for loss or damage incurred or threatened against you or arising directly or indirectly from your use of the Equipment;
- (k) shall indemnify the Owner against any claim made by any person against the Owner for any loss suffered or liability incurred arising directly or indirectly out of your use or possession of the Equipment;
- (l) shall ensure that when the Equipment are not in use during the Term they are securely stored and/or locked; and
- (m) shall not sell, assign or transfer the Equipment, or otherwise part with possession of, or mortgage, charge or encumber the Equipment in any way.

7.2 You warrant that all persons who use the Equipment shall use them in the manner they were designed to be used, and follow any codes of practice and directions from the Owner, local authorities, or from the manufacturer of the Equipment relating to the use and safety of the Equipment, and shall comply with all obligations in relation to the use and control of the Equipment and persons using the Equipment with the Health and Safety at Work Act 2015 and all other relevant legislation.

7.3 If you are not an individual, then the person who signs this Agreement on your behalf warrants that they have authority to bind you and will, in any event, be personally liable for the performance of your obligations under this Agreement.

8. Owner's Right to Cancel

8.1 If the Owner believes the Equipment to be at risk for any reason whatsoever including but not limited to:

- (a) the manner of their use by you; or
- (b) adverse weather or work conditions; or
- (c) where you are unable to, or might be unable to pay any amounts payable to the Owner; or
- (d) where you otherwise fail to comply with this Agreement,

1. the Owner may at any time cancel this Agreement and upon such cancellation you shall immediately return the Equipment or the Owner may take action as necessary to retake possession of the Equipment.

8.2 You grant to the Owner, or will ensure that the Owner is granted, an irrevocable right and authority to enter at any time onto any place where the Equipment are situated or thought to be situated to remove the Equipment.

8.3 Cancellation of this Agreement by the Owner is without prejudice to any rights that the Owner may have under this Agreement.

8.4 Notwithstanding that the Owner may have cancelled this Agreement, you indemnify the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any Equipment hired or monies payable by you under this Agreement.

8.5 The Owner will not be liable to you or any other persons for any loss suffered or liability incurred arising from cancellation of this Agreement or repossession of the Equipment.

8.6 Any obligations that you have to the Owner under this Agreement which remain wholly or partly unfulfilled at the time of cancellation of this Agreement or the end of the hire period shall continue and not be released notwithstanding the end of the hire period or the cancellation of this Agreement.

9. Vehicles

9.1 If the Chattel being hired is a vehicle (or vehicles) then notwithstanding any other provision in this Agreement, you shall:

- (a) ensure that the vehicle is driven during the period of hire only by the Designated Operator and only if they hold a current full driver's licence appropriate for the vehicle at the time when they are driving the vehicle;
- (b) as soon as possible, where the vehicle is damaged or requires repair or salvage, whether because of an accident or breakdown, advise the Owner of the full circumstances by telephone;
- (c) not arrange or undertake any repairs or salvage without the authority of the Owner except to the extent that the repairs or salvage are necessary to prevent further damage to the vehicle or to other property;
- (d) ensure that no person shall interfere with any distance recorder or speedometer or, except in an emergency, any part of the engine, transmission, braking, or suspension systems of the vehicle;
- (e) not use or permit the vehicle to be used for the carriage of passengers for hire or reward unless the vehicle is hired with the knowledge of the Owner for use in a passenger service licensed under Part 4A of the Land Transport Act 1998;
- (f) not:
 - (i) sublet or hire the vehicle to any other person;
 - (ii) permit the vehicle to be operated outside your authority;
 - (iii) operate the vehicle or permit it to be operated in circumstances that constitute an offence by the driver against any of sections 56, 57, 57AA, 57A and 58 of the Land Transport Act 1998 (which relates to driving under the influence of alcohol or drugs);
 - (iv) operate the vehicle or permit it to be operated in any race, speed test, rally or contest;
 - (v) operate the vehicle or permit it to be operated in breach of the Land Transport Act 1998, the Traffic Regulations 1976 or



- (vi) operate the vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the vehicle; or
- (g) ensure that a copy of this Agreement is kept within the vehicle throughout the Term and produced without delay for inspection upon demand by an enforcement officer.

9.2 You will be responsible for all penalties relating to traffic offences incurred during the Term, including without limitation speeding, parking, toll and traffic signal offences. You acknowledge that an administration fee of \$50 administration fee for ticket offences plus GST will be charged by the Owner to you to process these infringements.

10. Liability

- 10.1 If you are hiring the Equipment for the purposes of a business as defined in the Consumer Guarantees Act 1993, then guarantees and undertakings applying to the Owner under the Consumer Guarantees Act 1993 are excluded to the maximum extent permitted by law.
- 10.2 Except where the Owner is in breach of an applicable guarantee under the Consumer Guarantees Act 1993, in entering into this Agreement you agree that the Owner shall not be liable for direct or consequential damage or lost profit or business, loss or expense whatsoever and howsoever arising (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law and whether suffered by you and/or any third party for any amount that exceeds the amount you have actually paid to the Owner under this Agreement.
- 10.3 In the event of a defect in the Equipment, the Owner may at its discretion either provide you with replacement Equipment for the remainder of the Term or refund the Hire Charges you have paid.
- 10.4 You acknowledge that the Owner makes no representation or warranty to you regarding the suitability of the Equipment for use in any particular conditions and that any condition or warranty expressed or implied by law in respect of the hire of the Equipment to you is expressly excluded to the maximum extent permitted by law.

11. No Assignment

- 11.1 You may not assign, transfer or subcontract in any way your rights, powers or obligations under this Agreement.

12. Personal Property Securities Act 1999 (PPSA)

- 12.1 All terms in this clause 12 have the meaning given in the PPSA and section references are to sections of the PPSA.
- 12.2 On the request of the Owner, you shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this Agreement in favour of the Owner constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 12.3 You will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with this Agreement.
- 12.4 You waive your rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA.

13. Privacy Act 1993

- 13.1 If you are an individual, this clause 13 applies. This Agreement collects personal information about you. The information is principally collected to evaluate the hire of Equipment to you and such information is collected and held by the Owner.
- 13.2 The failure to provide the information in the Schedule may result in your application to the Equipment being declined or this Agreement subsequently being terminated by the Owner.
- 13.3 You have rights of access to your personal information contained in this Agreement, subject to the provisions of the Privacy Act 1993. You authorise the disclosure of personal information held by any other party regarding any previous hire agreements entered into by you. You agree to the Owner releasing to other parties information regarding this Agreement.
- 13.4 You and each Designated Operator authorise the Owner:
- (a) to collect, retain and use information about you or the Designated Operator from any person for the purpose of assessing you or the Designated Operator's creditworthiness and traffic offence history;
 - (b) to disclose information about you or the Designated Operator:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to the Owner;
 - (ii) to such persons as may be necessary or desirable to enable the Owner to exercise any power or enforce or attempt to enforce any of the Owner's rights, remedies and powers under this Agreement.

14. General

- 14.1 Subject to clause 14.2, the terms of this Agreement shall not be modified, amended or waived, in whole or in part, except by written

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Digger Hire Ltd

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agreement with the Owner.

14.2 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions of this Agreement shall in any way be affected or impaired with the intent that this Agreement should be construed as if the provision or part thereof in question has been deleted.

14.3 This Agreement is governed by the laws of New Zealand.

14.4 Any claim or dispute arising under this Agreement shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.