

1. Definitions

- 1.1 "Supplier" means Delta Stock Crates Limited, its successors and assigns or any person acting on behalf of and with the authority of Delta Stock Crates Limited.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.5 "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.
- 1.6 "Price" means the Price payable for the Goods/Equipment hire as agreed between the Supplier and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 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 the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 In the event that the Supplier accepts a trade-in as part payment of purchases, Goods or machinery outright, then the Client acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.

3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Authorised Representatives

- 4.1 The Client acknowledges that the Supplier shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Supplier, that person shall have the full authority of the Client to order any Goods and/or to request any variation thereto on the Client's behalf. The Client 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 Services or variation/s requested thereto by 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.

5. Change in Control

- 5.1 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, contact phone or fax number/s, 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.

6. Price and Payment

- 6.1 At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Price as at the date of delivery of the Goods/Equipment according to the Supplier's current price list; or
 - (c) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Supplier reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Goods/Equipment originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, price fluctuations in raw materials, availability of raw materials, availability of machinery, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.
- 6.3 At the Supplier's sole discretion a deposit may be required.
- 6.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
 - (d) for certain approved Client's, 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;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Supplier.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.

6.6 Unless otherwise stated the Price does not include GST. In addition to the Price 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 agreement for the sale of the Goods/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.

7. Delivery of Goods/Equipment

7.1 Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:

- (a) the Client or the Client’s nominated carrier takes possession of the Goods/Equipment at the Supplier’s address; or
- (b) the Supplier (or the Supplier’s nominated carrier) delivers the Goods/Equipment to the Client’s nominated address even if the Client is not present at the address.

7.2 At the Supplier’s sole discretion the cost of delivery is in addition to the Price.

7.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

7.4 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.5 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

8. Risk to Goods

8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

8.2 If any of the Goods 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 Goods. 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.

8.3 If the Client requests the Supplier to leave Goods outside the Supplier’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client’s sole risk.

8.4 The Client acknowledges that Goods supplied may:

- (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.

8.5 Where the Client has supplied materials for the Supplier to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the materials, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.

8.6 The Client acknowledges that the Supplier is only responsible for parts that are replaced by the Supplier, and in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

8.7 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. 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 from these inaccurate plans, specifications or other information.

8.8 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Supplier shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.

8.9 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

8.10 The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and other trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.

8.11 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

8.12 The Supplier shall not be liable for inferior existing paintwork where the Supplier’s paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish.

8.13 The Client acknowledges and agree that where the Supplier has performed temporary repairs that:

- (a) the Supplier offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) the Supplier will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.

8.14 Where the Client has left a vehicle with the Supplier for repair, restoration, or modification or for the Supplier to perform any other service in relation to the item, it shall be at the sole risk of the Client. The Supplier shall not be liable for any loss or damage to any vehicle whilst in the care of the Supplier, it shall be the responsibility of the Client to ensure the vehicle is adequately insured, or at all (including but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on the Supplier’s premises.

8.15 The Supplier shall reserve the right to charge the Client storage fees for items that have been purchased, repaired or modified that have not been collected by the Client once notified the Goods are ready to be collected.

9. Specifications

9.1 The Client acknowledges that:

- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Supplier’s or manufacturer’s fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely

on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier;

(b) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Supplier has given these in good faith, and are estimates based on industry prescribed estimates.

9.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

9.3 The Supplier reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases the Supplier will notify the Client in advance of any such substitution.

10. Compliance with Laws

10.1 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.

10.2 The Client shall obtain (at the expense of the Client) all licenses, certification and approvals that may be required for the Services.

10.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

11. Title to Goods

11.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:

(a) the Client has paid the Supplier all amounts owing to the Supplier; and

(b) the Client has met all of its other obligations to the Supplier.

11.2 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.

11.3 It is further agreed that:

(a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.

(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.

(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.

(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.

(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.

(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

12.1 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 Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

12.2 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 Goods/Equipment charged thereby;

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) 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 Goods which would result in a change in the nature of proceeds derived from such sales.

12.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

12.5 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.

12.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 12.1 to 12.5.

13. Security and Charge

13.1 In consideration of the Supplier agreeing to supply the Goods/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).

13.2 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.

13.3 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 13 including, but not limited to, signing any document on the Client's behalf.

14. Client's Disclaimer

14.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

15. Consumer Guarantees Act 1993

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

16. Defects

16.1 The Client shall inspect the Goods/Equipment on delivery and shall within seven (7) days 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 Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/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 Goods/Equipment or repairing the Goods/Equipment.

16.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 16.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

16.3 Furthermore, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 16.1; and
- (b) the Supplier has agreed that the Goods/Equipment are defective; and
- (c) the Goods/Equipment are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods/Equipment are returned in as close a condition to that in which they were delivered as is possible.

16.4 The Client acknowledges and accepts that where the Supplier is notified of any defect in the Goods/Equipment in accordance with clauses 16.1 and 16.3(c), the Client agrees to the return the defective Goods and/or Equipment to the point of delivery or to an approved destination agreed to with the Supplier, as soon as reasonable possible. The Supplier shall not be liable for any direct, indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of any delay in replacing the Goods/Equipment).

17. Warranty

17.1 Subject to the conditions of warranty set out in Clause 17.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.

17.2 The conditions applicable to the warranty given by Clause 17.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
- (c) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

17.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. 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 Goods.

17.4 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

18. Intellectual Property

18.1 Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.

18.2 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.

18.3 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 Goods/Equipment which the Supplier has created for the Client.

19. Default and Consequences of Default

19.1 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.

19.2 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).

19.3 Without prejudice to any other remedies the Supplier 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 Supplier may suspend or terminate the supply of Goods/Equipment to the Client.

- The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 19.4 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:
- (a) 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;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Cancellation**
- 20.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment 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 Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods/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.
- 21. Privacy Act 1993**
- 21.1 The Client authorises the Supplier or the Supplier'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 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.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.
- 22. Unpaid Seller's Rights**
- 22.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.
- 23. General**
- 23.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.
- 23.2 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 in the region in which the Supplier has its principal place of business.
- 23.3 The Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 23.4 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Additional Terms & Conditions Applicable to Hire Only

24. Hire Period

- 24.1 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

- 24.2 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 24.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 25. Risk to Equipment**
- 25.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 25.2 The Customer 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 or damage is attributable to any negligence, failure, or omission of the Client 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 Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 25.3 Notwithstanding clause 25.2 hire periods in excess of six (6) months must be insured by the Customer, unless otherwise agreed in writing by both parties.
- 25.4 The Client accepts full responsibility for and 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 or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 26. Title to Equipment**
- 26.1 The Equipment is and will at all times remain the absolute property of the Supplier.
- 26.2 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.
- 26.3 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.
- 27. Client's Responsibilities**
- 27.1 The Client shall:
- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (b) 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;
 - (c) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (d) 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;
 - (e) 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;
 - (f) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (g) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (h) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (i) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment.
- 27.2 Immediately on request by the Supplier the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
 - (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 the negligence of the Client or the Client's agent;
 - (e) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (g) the cost of fuels and consumables provided by the Supplier and used by the Client.
- 27.3 No warranty is given by the Supplier 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 Supplier in respect of all claims arising out of the use of the Equipment.
- 28. Lease to Own**
- 28.1 Upon expiry of the Hire Period, provided the Client has made full payment of all monies payable and fulfilled their obligations under this agreement, the Client may enter into a separate agreement to acquire ownership of the Equipment by payment to the Supplier of the specified amount, and in this case clauses (title to goods, delivery, risk, returns and warranty) shall be applicable.