

TERMS AND CONDITIONS OF HIRE

The Terms and Conditions set out below apply to the hire of all goods supplied by Total Access Ltd (The Company). The Company is not bound to any variation to the Terms and Conditions unless recorded in writing and signed by a duly authorised officer of the Company. These are the entire terms and conditions of hire of all goods supplied by the Company and except as otherwise expressly agreed upon in writing between the parties, the terms and conditions herein shall apply notwithstanding any provisions to the contrary which may appear on any form or other document issued by any other party. In these terms and conditions: "The Hirer" means any party described on the Credit Application form and includes that Hirer's employees, agents, sub-contractors and invitees. "The Goods" means the equipment referred to on any invoice from the Company and forms the subject of this hire agreement and includes any accessories, replacements, additional or other goods which are supplied with the Goods at the time of hire of thereafter. "Hire Period" means the period from delivery of the Goods by the Company to the address specified by the Hirer until the time of collection of the Goods by the Company. The Company will confirm to the Customer when it considers the Hire Period to be at an end by the issue of an "Off Hire" number.

General

1. All applications to hire are subject to these Terms and Conditions. A binding hire agreement containing these Terms and Conditions shall arise in respect of each application to hire placed by the Hirer with the Company when the Company issues an invoice or delivers the goods to the Hirer.
2. No quotation by the Company shall constitute an offer to hire.

Hire Charges

3. The Hirer will pay to the Company the Hire Charges applying at the time of hire in accordance with the terms of payment set out below, together with any additional payments invoiced or demanded by the Company to the Hirer in accordance with these terms and conditions including, but not limited to, charges for delivery, labour, maintenance, repair, replacement and collection of the goods, interest and solicitor/client costs of recovery in the event of default of payment by the Hirer.
4. Minimum hire Charges will be those contained in the list of standard hire charges applying at the time of hire. Thereafter charges are calculated weekly, fractions of a week being on a daily basis.
5. Hire rates include fair wear and tear only. When goods are returned in a condition other than when received by the Hirer, the Company may in addition to the Hire Charge, charge the Hirer for cleaning, reconditioning, renewing, repairing or replacing the goods where considered necessary by the Company.
6. Hire charges quoted do not include any duty, tax or levy. Where applicable, any such duty, tax or levy shall be borne by the Hirer.
7. Hire charges quoted are those applicable at the date of quotation. If the Company's standard Hire Charge for any of the goods increase after the date of quotation, the company reserves the right to invoice the Hirer at the revised prices without notice.

Terms of Payment

8. Approved accounts strictly net, due for payment 20th of the month following the date of invoice.
9. In the event of any payment being in arrears for more than 30 days, the company may terminate the hire agreement without notice and without prejudice to any monies which may have become due and payable by the Hirer to the Company.
10. Overdue payments from the Hirer can incur interest costs calculated at 18% per annum, such costs calculated daily.
11. Overdue accounts may be referred for collection and all costs incurred (including solicitor/client costs) will be added to the amount due.

Delivery

12. Hireage of product commences as soon as 'The Company' has delivered the product to 'The Hirer'. If the Hirer collects the product, hireage commences as soon as 'The Company' has loaded the product on to the Hirer's transportation.
13. The Hirer will pay to the Company on each occasion a delivery and erection charge and a dismantle and collection charge at the Company's standard transport and labour rates applicable at the date of delivery or collection immediately upon presentation of a tax invoice by the Company. Such charge shall include any wasted journey or transport time incurred by the Company in attempting reasonably to comply with the express or implied requirements of the Hirer and wasted without fault on the part of the Company.
14. The Company is not liable to the Hirer for failure to deliver the goods on a specific date or within a specified time from receipt of order for hire.
15. The Hirer shall be responsible for receiving the goods on site. In the event of any shortage and/or damage to the goods prior to delivery, the delivery docket must be endorsed by the Hirer at the time of delivery specifying such shortage and/or damage and immediately notify the Company.

Warranties and Exclusions

16. The Hirer warrants that he/she/it:
 - 16.1 has truly represented the payment of the full amount of the deposit;
 - 16.2 is not a convicted person, an undischarged bankrupt, or if a company, insolvent within the meaning of the Companies Act 1993 (or amendments thereto);
 - 16.3 will keep the goods within the Hirer's control;
 - 16.4 will not alter the goods or any identifying number or mark thereon;
 - 16.5 will not remove the goods from the Hirer's premises or the address to which they were delivered without the written consent of the Company;

- 16.6 will maintain and keep the goods in full working order from the date of delivery to the date of collection of the goods by the Company;
- 16.7 will not part with possession of the goods;
- 16.8 will produce/make available the goods for inspection at any time when requested by the Company;
- 16.9 will notify the Company of any change in his/her/its address for service of any notice if the same changes during the course of the hire agreement.
17. Nothing in these terms and conditions shall be construed or deemed to be an express warranty or condition by the Company as to the quality, fitness or suitability of the goods hired and all implied terms, conditions or warranties statutory or otherwise are hereby excluded to the event permitted by law.
18. The Hirer agrees to inspect the goods prior to delivery and to ascertain that they are fit for the use for which they are required by the Hirer; acceptance of delivery of the goods by the Hirer shall be deemed to be conclusive evidence of inspection and approval of the goods.
19. To the extent that any warranty is implied into this agreement which cannot be excluded by law, or for the breach of any term of this contract for which liability is not lawfully excluded, the Company hereby limits its liability for any such breach to the resupply of the hire service.
20. The Company will not be liable for any loss or damage (including consequential loss or damage) suffered by the Hirer as a result of any breakdown or non-performance of the goods during the period of hire.

Repossession of goods

21. The Hirer agrees that;
 - 21.1 if any false statement has been made in relation to the hire agreement; or
 - 21.2 if any deposit referred to on the agreement is not paid in full; or
 - 21.3 of any default is made or breach is committed in relation to this agreement or it is terminated for any reason; or
 - 21.4 if the Hirer commits any act of bankruptcy, is subject to execution or distress or, being a company, goes into receivership or liquidation; or
 - 21.5 being a natural person, is declared insane then in any such event, the Company will be immediately entitled to possession of the goods and may repossess them without notice and with the use of force.

Repair and Maintenance of Goods

22. The Hirer agrees that should any goods require maintenance and/or repairs shall be effected only by the Company or its duly authorised agent at the cost of the Hirer.
23. The Hirer is responsible for;
 - 23.1 any damage to the goods by any party other than the Company; whether malicious, negligent or accidental;
 - 23.2 the cost of repair or replacement of any goods which have been modified or altered in any way by any person other than the Company.
 - 23.3 the repair or replacement of the goods where any action by the Hirer or any person other than the Company invalidates any warranty for the equipment given to the Company by its manufacturer or supplier and the Hirer will pay to the Company in relation to repair or replacement of the goods and any other loss suffered by Company.

No lien or Charge

24. The Hirer is prohibited from creating any lien or charge over the goods or pledging the credit of the Company.

Drawings

25. The Company accepts no responsibility for any drawings, designs or specifications and submissions of any drawings, designs, or specifications does not constitute any warranty, guarantee, representation or opinion of the practicality of construction or the efficacy, safety or otherwise of the goods to be supplied by the Company in accordance therewith and the Company will not be responsible for the cost of any additional work caused by defects in such drawings, designs or specifications. The Company will not be liable for any consequential loss or damage caused directly or indirectly by any defect or otherwise however caused.

Force Majeure

26. The Company shall not be liable for any failure or delay to supply, deliver or collect the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Company including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

Indemnity

27. The Hirer indemnifies the Company in respect of any claim for loss or damage including any claim for personal injury whether such claim is made in contract, tort (including negligence) or on any other basis whatsoever, including any breach of any legislation, arising out of or in any way related to the use of the goods by the Hirer and the Hirer hereby warrants that the Hirer holds insurance to cover the Hirer's liabilities arising from or relating to the use of the goods.
28. The Hirer indemnifies the Company against the destruction or loss of the goods by any means or for any reason whatsoever, including lawful confiscation.

Insurance

29. The goods shall be at the sole risk of the Hirer from the time of delivery by the Company until collection by the Company. The Hirer will effect replacement insurance in the joint names of the Hirer and the Company against loss or damage however caused, and will provide proof of such insurance to the Company upon request.

Access to Site

30. The Hirer will allow the Company at its request, to enter the premises of the Hirer or provide access to any site, building or location under the control of the Hirer where the goods are situated for the purpose of inspection, maintenance or repossession of the goods. If the Hirer is not the owner of the site, the Hirer warrants that it has the authority to permit such entry to the Company.

Return of Goods

31. Hireage of product ceases upon 'The Company' loading the product onto 'The Company's' transportation. If the Hirer delivers the product back to 'The Company', hireage ceases upon 'The Company' unloading the product at the Hirer's premises.'
32. When goods are collected by the Company or returned by 'The Hirer' the returned goods will be counted on site for quantity and upon arrival in the Company's yard such goods will be checked for both quantity and condition. In both cases the check in the Company's yard for quantity and condition will be the only legal proof of the quantity and condition of goods returned.
33. No returns will be actioned on weekends or public holidays or after 5pm Monday to Friday.
34. Upon the expiration of the Hire Period (evidenced by the issue of an off hire number by the Company to the Hirer) the Company will use its best endeavours to collect the goods from the Hirer within two working days from the end of the Hire Period.
35. The obligations of the Hirer under this agreement shall not cease upon notification by the Company to the Hirer of an off hire number. The Customer acknowledges that the rights of the Company herein shall continue until such time as the Company is satisfied that the provisions of Clause 28 hereof have been complied with.

Lost Goods

36. Where goods are not returned to the Company or where the Company receives notice that the goods have been lost or where after reasonable notice from the Company the Hirer does not produce all or part of the goods, such goods shall be treated as "Lost Goods". The Company may invoice the Hirer for the lost goods at the standard sale price at the date of the invoice and the Hirer will pay the invoice immediately upon demand. Until such sum is paid Hire Charges will continue to accrue for the lost goods.
37. Where lost goods are subsequently returned to the Company or recovered and taken back into use by the Hirer, the Hirer shall be entitled to a credit equal to the sum paid for the lost goods and the Company shall be entitled to off-set against such sum received in payment of the lost goods hire charges in respect of the goods as if such goods had never been lost but had throughout and continuously been in the possession and use of the Hirer.

Waiver

38. No waiver by the Company of any breach of this hire agreement shall be deemed a waiver of any continuing or recurring breach. The Company's rights are not affected by any waiver or indulgence granted by the Company. Consumer Guarantees Act 1993 (CGA) and Credit (Repossession) Act 1997 (CRA)
39. Where this agreement would otherwise be subject to the provisions of the CGA and or the CRA and where such supply is a supply for business purposes, the Hirer agrees that the goods are supplied by the Company to the Hirer for business purposes in terms of sections 2 and 43 of the CGA and section 42 of the CRA and that the provisions of the CGA and CRA do not apply to the supply of goods for hire to the Hirer hereunder. The Hirer is not a consumer for the purposes of these Terms and Conditions.

Privacy Act 1993

40. The Hirer authorises any person or company to provide the Company with information in response to the Company's credit enquires and authorises the Company to make such enquiries. The Hirer further authorises the Company to furnish to any third party details of this agreement and any subsequent dealings that the Hirer may have with the Company.

Service of Documents

41. The Hirer agrees that service of any notices or Court documents may be effected by forwarding the same by pre-paid post, facsimile or personal delivery to the last known address of the Hirer.

Governing Law

42. This agreement will be governed by and construed according to the laws of New Zealand.

I have read and understand these terms and conditions:

COMPANY NAME: _____

CONTACT NAME: _____

SIGNATURE: _____

DATED: _____