
Hireways Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Hireways” means Hireways Ltd, its successors and assigns or any person acting on behalf of and with the authority of Hireways Ltd.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Hireways to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by Hireways to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Equipment” means all Equipment including any accessories supplied on hire by Hireways to the Customer (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 Hireways to the Customer.
- 1.6 “Vehicle” shall mean any Vehicle (including but not limited to either light or heavy Trucks) supplied by Hireways to the Customer. The Vehicle shall be described on the invoices, quotation, work authorisation or any other forms as provided by Hireways to the Customer.
- 1.7 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Hireways to the Customer.
- 1.8 “Trade Customers” are only those Customer’s whom Hireways has agreed is currently entitled to trade credit terms.
- 1.9 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.10 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.11 “Price” means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax (“GST”) where applicable) as agreed between Hireways and the Customer in accordance with clause 8 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with Hireways and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment request exceeds the Customers credit limit and/or the account exceeds the payment terms, Hireways reserves the right to refuse Delivery.
- 2.6 None of Hireway’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of Hireways in writing nor is Hireways bound by any such unauthorised statements.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Contract Term

- 4.1 The Customer acknowledges and agrees that these Terms and Conditions of Hire shall be valid for a Contract Term of up to ten (10) months from the date of commencement unless otherwise agreed in writing.
- 4.2 The Customer further acknowledges and agrees that there is no right of renewal of this Contract unless otherwise agreed in writing.

5. Authorised Representatives

- 5.1 The Customer acknowledges that Hireways shall (for the duration of the hire period) liaise directly with one (1) authorised representative, and that once introduced as such to Hireways, that person shall have the full authority of the Customer to order any further Equipment and/or to request any variation thereto on the Customer’s behalf. The Customer accepts that they will be solely liable to Hireways for all additional costs incurred by Hireways (including Hireways’ profit margin) in providing any Services or variation/s requested thereto by the Customer’s duly authorised representative.

6. Errors and Omissions

- 6.1 The Customer acknowledges and accepts that Hireways shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by Hireways in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Hireways in respect of the Services.
- 6.2 In the event such an error and/or omission occurs in accordance with clause 6.1, and is not attributable to the negligence and/or wilful misconduct of Hireways; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

7. Change in Control

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

8. Price and Payment

8.1 At Hireways' sole discretion the Price shall be either;

- (a) as indicated on invoices provided by Hireways to the Customer in respect of Goods/Equipment supplied; or
- (b) the Price as at the date of delivery of the Goods/Equipment according to Hireways' current Price list; or
- (c) Hireways' quoted Price (subject to clause 8.2) which is subject to a site inspection, and shall be binding upon Hireways provided that the Customer shall accept Hireways' quotation in writing within thirty (30) days.

8.2 Hireways reserves the right to change the Hire Price:

- (a) if a variation to the Goods/Equipment which is to be supplied is requested; or
- (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of Equipment, safety considerations etc) which are only discovered on commencement of the Services;
- (c) in the event of increases to Hireways in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond Hireways' control.

8.3 Variations will be charged for on the basis of Hireways' quotation, and will be detailed in writing, and shown as variations on Hireways' invoice. The Customer shall be required to respond to any variation submitted by Hireways within ten (10) working days. Failure to do so will entitle Hireways to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

8.4 Deposit

- (a) a non-refundable deposit is required to secure a booking with the balance being payable before pick up and/or delivery of the Equipment. The deposit payment forms part of the total payment due for the Equipment and is separate from the bond payment; and
- (b) the deposit may be used to offset any applicable charges payable by Hireways under clause 27.3, and any outstanding balance thereof shall be due as per clause 8.6.

8.5 Refundable Bond

- (a) A refundable bond is payable for Equipment provided on hire and will be refunded if the Equipment are returned in good order and working condition. If the Equipment returned are unclean, missing items, stained, or damaged in any way, the bond will be retained by Hireways. The refund will be processed within twenty-eight (28) days of the expiry/return date of the Equipment, whichever occurs first.

8.6 Time for payment for the hire of the Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Hireways:

- (a) Hire Price which may be:
 - (i) **Half Day** – means four (4) hours or overnight providing the Equipment is picked up after 4.00pm and returned by 8.30am the following day (maximum usage time four (4) hours);
 - (ii) **Daily** – means twenty-four (24) hours (maximum usage time eight (8) hours): if the weekly rate is less than the accumulated daily rate, then the weekly hire rate will apply;
 - (iii) **Weekly** – means seven (7) days (maximum usage time fifty-six (56) hours);
 - (iv) **Monthly** – means a calendar month (maximum usage time one hundred and eight dollars (180) hours).
- (b) by way of instalments/progress payments in accordance with Hireways' payment schedule; or
- (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
- (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 Customer by Hireways.

8.7 With respect to "Non Trade Customers" time for payment shall be made on the date when the Equipment is returned, or within seven (7) days of the commencement of the hire period, whichever is earlier. Where the hire period is extended to more than seven (7) days then the hire charge shall be payable at the end of each seven (7) day period in respect of the prior seven (7) days and at the end of the term of hire in respect of the hire period not previously paid for.

8.8 Payment will be made by cheque, electronic/on-line banking, eftpos, Farmlands (if applicable) or by any other method as agreed to between the Customer and Hireways.

8.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Hireways nor to withhold payment of any invoice because part of that invoice is in dispute.

8.10 Hireways may in its discretion allocate any payment received from the Customer towards any invoice that Hireways determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Hireways may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Hireways, payment will be deemed to be allocated in such manner as preserves the maximum value of Hireways' Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.

8.11 The Customer shall not be entitled to set off against, or deduct from the C, any sums owed or claimed to be owed to the Customer by Hireways nor to withhold payment of any invoice because part of that invoice is in dispute.

8.12 The Customer acknowledges and agrees that the Customer's obligations to Hireways for the supply of Equipment on hire shall not cease until:

- (a) the Customer has paid Hireways all amounts owing for the hire of the Equipment; and
- (b) the Customer has met all other obligations due by the Customer to Hireways in respect of all contracts between Hireways and the Customer.

8.13 Receipt by Hireways of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Hireways' ownership or rights in respect of this Contract shall continue.

8.14 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

8.15 The Customer accepts and agrees Hireways has right of recovery, and in the event of a liquidation where payments have been made in accordance with normal business practice and as set out herein, such payment shall not be regarded as preferential.

9. Provision of the Services

- 9.1 Delivery of the Equipment and/or Services (“**Delivery**”) is taken to occur at the time that Hireways (or Hireways’ nominated carrier) delivers the Equipment and/or Services (in the case of Equipment, where it is installed and hand-over certificate is issued) to the Customer’s nominated address, even if the Customer is not present at the address. In the event the Customer (or a representative thereof) is not present at the time of Delivery, Hireways’ delivery docket remains prima facie evidence of such.
- 9.2 Return of the Equipment (“**Return**”) will be completed when the Equipment has been accepted by Hireways, by their off-hire docket. Where the Equipment is returned by the Customer’s transport, the Equipment returned shall be counted in Hireways’ yard and the off-hire docket issued to the Customer shall be conclusive proof of the Return of the quantities of Equipment listed thereon, but not of its condition at the time of Return. If the Customer collects the Equipment, it will be checked on arrival in Hireways’ yard for quantity and condition. In both cases the check in Hireways’ yard for quantity and condition will be the only legal proof of the quantity and condition of Equipment returned.
- 9.3 Unless otherwise agreed to by Hireways, a request made by the Hire to collect the Equipment and/or terminate this Contract, must be made in writing and received by Hireways at least three (3) business days prior to the requested date of collection and/or termination, and:
- (a) the loading of the Equipment collected by Hireways is the responsibility of the Customer; and
 - (b) Hireways reserves the right to charge the Customer for the cost of Equipment hired (and the cost of labour) incurred for any cancellation or termination of this Contract, or any alteration to the Equipment to be supplied and/or the hire period.
- 9.4 Unless otherwise agreed between the parties in writing, Hireways shall provide (as the Customer’s agent) transport of the Equipment to and from the site, and transport charges (including loading equipment):
- (a) shall, at the sole discretion of Hireways, be in addition to, the Price, unless otherwise specified; and
 - (b) are quoted on the basis of Delivery and/or collection of the Equipment of a full load. Small loads, or part loads, will incur additional Price; and
 - (c) allow for a maximum of ninety (90) minutes loading or unloading time per visit to the site during Hireways’ normal business hours. Delivery and/or collection of the Equipment (including any waiting time) outside Hireways’ normal business hours will incur additional charges.
- 9.5 Hireways may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.6 Any time specified by Hireways for Delivery is an estimate only and Hireways will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that Hireways is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer then Hireways shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date.
- 9.7 Hireways shall not be responsible for delay or non-completion of the job for which the Equipment is hired resulting from an act beyond the reasonable control of Hireways, including but not limited to, industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather.
- 9.8 The Customer shall ensure that Hireways has clear and free access to the nominated address at all times to enable them to make Delivery. Hireways shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of Hireways.
- 9.9 In the event of Wet Hire, the operator responsible for the Equipment remains an employee of Hireways and shall erect the Equipment in accordance with the Customer’s instructions. Hireways shall not be liable for any actions of the operator in following the Customer’s instructions.

10. Risk to Goods

- 10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Hireways is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Hireways is sufficient evidence of Hireways’ rights to receive the insurance proceeds without the need for any person dealing with Hireways to make further enquiries.
- 10.3 If the Customer requests Hireways to leave Goods outside Hireways’ premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.

11. Title to Goods

- 11.1 Hireways and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Hireways all amounts owing to Hireways; and
 - (b) the Customer has met all of its other obligations to Hireways.
- 11.2 Receipt by Hireways 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 Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to Hireways on request;
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for Hireways and must pay to Hireways the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Hireways and must pay or deliver the proceeds to Hireways on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Hireways and must sell, dispose of or return the resulting product to Hireways as it so directs.;
 - (e) the Customer irrevocably authorises Hireways to enter any premises where Hireways believes the Goods are kept and recover possession of the Goods;
 - (f) Hireways may recover possession of any Goods in transit whether or not Delivery has occurred;

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- (g) the Customer 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 Hireways;
- (h) Hireways may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 To the extent that these Terms and Conditions of Hire do not exceed a twelve (12) month Contract term, the Customer acknowledges that nothing in this agreement creates or provides for a security interest.
- 12.2 To the extent that these Terms and Conditions of Hire do exceed a twelve (12) month Contract term, this agreement is the security agreement for the purposes of PPSA generally and in particular Section 36.
- 12.3 Upon assenting to these terms and conditions in writing the Customer 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 Customer to Hireways for Services – that have previously been supplied and that will be supplied in the future by Hireways to the Customer.
- 12.4 The Customer 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 Hireways may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Hireways 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 Hireways; and
 - (d) immediately advise Hireways 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.
- 12.5 Hireways and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.6 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Hireways, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.8 The Customer shall unconditionally ratify any actions taken by Hireways under clauses 12.1 to 12.7.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.

13. Security and Charge

- 13.1 In consideration of Hireways agreeing to supply the Goods/Equipment, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Hireways from and against all Hireways’ costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Hireways’ rights under this clause.
- 13.3 The Customer irrevocably appoints Hireways and each director of Hireways as the Customer’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 Customer’s behalf.

14. Consumer Guarantees Act 1993

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

15. Defects

- 15.1 The Customer shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Hireways of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Hireways an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer 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 Hireways has agreed in writing that the Customer is entitled to reject, Hireways’ liability is limited to either (at Hireways’ discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 15.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 15.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

16. Warranty

- 16.1 To the extent permitted by statute, no warranty is given by Hireways as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Hireways shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

17. Intellectual Property

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- 17.1 Where Hireways has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Hireways. Under no circumstances may such designs, drawings and documents be used without the express written approval of Hireways.
- 17.2 The Customer warrants that all designs, specifications or instructions given to Hireways will not cause Hireways to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Hireways against any action taken by a third party against Hireways in respect of any such infringement.
- 17.3 The Customer agrees that Hireways may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Hireways has created for the Customer.

18. Default and Consequences of Default

- 18.1 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 Hireways' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Hireways any money the Customer shall indemnify Hireways from and against all costs and disbursements incurred by Hireways in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Hireways' collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Hireways may have under this Contract, if a Customer has made payment to Hireways, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Hireways under this clause 18, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 18.4 Without prejudice to Hireways' other remedies at law Hireways shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Hireways shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Hireways becomes overdue, or in Hireways' opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Hireways;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

19. Cancellation

- 19.1 Without prejudice to any other remedies Hireways may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Hireways may suspend or terminate the supply of Goods/Equipment to the Customer. Hireways will not be liable to the Customer for any loss or damage the Customer suffers because Hireways has exercised its rights under this clause.
- 19.2 Hireways 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 Customer. On giving such notice Hireways shall repay to the Customer any money paid by the Customer for the Goods/Equipment. Hireways shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels Delivery of Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Hireways as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by Hireways is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. Hireways acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Hireways acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Hireways that may result in serious harm to the Customer, Hireways will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Hireways in respect of Cookies where transactions for purchases/orders transpire directly from Hireways' website. Hireways agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Hireways when Hireways sends an email to the Customer, so Hireways may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Hireways' website.
- 20.3 The Customer authorises Hireways or Hireways' agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or

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- (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Hireways from the Customer directly or obtained by Hireways 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 Customer.
- 20.4 Where the Customer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Customer shall have the right to request Hireways for a copy of the Personal Information about the Customer retained by Hireways and the right to request Hireways to correct any incorrect Personal Information about the Customer held by Hireways.

21. Service of Notices

- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Trusts

- 22.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Hireways may have notice of the Trust, the Customer covenants with Hireways as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Customer will not without consent in writing of Hireways (Hireways will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. Signatory's Warranty As to Agency From Customer

- 23.1 Where the Contract is signed by a person on behalf of the Customer (but the signatory is not the Customer named in the Contract) then the following provisions shall take effect:
- (a) the person signing the Contract warrants to Hireways that he or she has the full authority of the Customer to enter into this Contract; and
 - (b) the person signing this Contract on behalf of the Customer shall remain personally liable hereunder until all obligations of the Customer have been fully met or any monies due hereunder by the Customer to Hireways; and
 - (c) the person signing this Contract on behalf of the Customer acknowledges that Hireways enters into this Contract in reliance upon the warranty given in clause 23.1(a) and the acknowledgement of personal liability set out in clause 23.1(b) hereof.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 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 Palmerston North District Courts of New Zealand.
- 24.3 Hireways shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Hireways of these terms and conditions (alternatively Hireways' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 24.4 Hireways may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of Hireways.
- 24.6 Hireways may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Hireways' sub-contractors without the authority of Hireways.
- 24.7 The Customer agrees that Hireways may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Hireways to provide Goods/Equipment to the Customer.
- 24.8 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.
- 24.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

Additional Terms & Conditions Applicable to Hire Only

25. Hire Period

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- 25.1 Hiring Price shall commence from the time the Equipment is collected by the Customer from Hireways' premises and continue until the return of the Equipment to Hireways' premises, and/or until the expiry of the Minimum Hiring Period, whichever last occurs.
- 25.2 If the Equipment is not returned to Hireways' premises within the hire period, then additional hiring charges shall be payable.
- 25.3 The business daily rate applies 1st and is chargeable for each 10 hour period of hire. Extra hours of hire will be charged additional, pro rata at the agreed rate.
- 25.4 The 24hr daily rate applies 1st and is chargeable for each 24 hour period of hire. Extra hours of hire will be charged additional, pro rata at the agreed rate..
- 25.5 The weekly rate applies to and is chargeable for hire with duration of 7 days or 7 consecutive 24 hour periods. Extra days of hire will be charged additional, pro rata at the weekly rate
- 25.6 The monthly rate applies to and is chargeable for hire with a minimum of 29 days. Extra days of hire will be charged additional, pro rata at the monthly rate.
- 25.7 Where hour meter/s mounted on the plant/or equipment are used to determine the hire charge, this record of use shall be in addition to the terms determined in clauses 4.2 to 4.7. Hour charges shall be calculated to the nearest half hour above the visual reading on the meter/s. Where the recording device is found not to be working either during or at the completion of the hire period then Hireways will estimate the hours used and the onus is on the Customer to prove otherwise.
- 25.8 Should Hireways agree with the Customer to deliver and collect the Equipment, hire charges shall commence from the time the Equipment leaves Hireways' premises until Hireways is notified by the Customer that the Equipment is available for collection. Notification shall constitute suspension of hire, providing notification is given by the Customer in time for the Equipment to be picked up and returned to Hireways' premises by the required return time on the day the hire ceases. The required return times are no later than 5.30 p.m. week days, or by arrangement weekends or Public Holidays, or such earlier time as the hire period may terminate. In the event insufficient notice is given the Customer may at Hireways' discretion be charged an extra 6 hours of hire.
- 25.9 If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse the Customer for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by Hireways due to delays in access to the Equipment.
- 25.10 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by Hireways. In the event of Equipment breakdown provided the Customer notifies Hireways immediately and obtains an "OFF-HIRE" number as verification, 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 Customer.

26. Risk to Equipment

- 26.1 Hireways retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.
- 26.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Hireways 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 Customer.
- 26.3 The Customer will insure, or self insure, Hireways' 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 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.
- 26.4 The Customer accepts full responsibility for and shall keep Hireways 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 Customer or any other persons.

27. Equipment Damage

- 27.1 Subject to the clauses 11.2 and 11.3 the Customer is responsible for any loss or damage occurring to the Equipment (other than damage arising as a consequence of a breach by Hireways of the guarantees provided by the CGA) from the time the Customer takes possession of the Equipment until it is returned to the possession of Hireways. The cost of any replacement or repairs resulting from loss or damage will be charged to and payable by the Customer. The Customer shall notify Hireways immediately if the Equipment is lost or damaged and shall forthwith follow any reasonable request by Hireways relating to Hireways' enquiries into the loss and/or damage to the Equipment.
- 27.2 If the Customer has:-
- (a) notified Hireways, in writing, of the full circumstances leading to the loss or damage to the Equipment within 24 hours of the loss or damage; and
 - (b) in the case of loss or damage caused by fire, storm, collision, accident, theft or burglary, lodged a full written complaint with the Police, and/or prepared an independent report as required by Hireways within 24 hours of the loss or damage, and provided Hireways with a copy of such complaint and/or report; and can establish, to Hireways' reasonable satisfaction, that adequate precautions were taken by the Customer to ensure that any loss of or damage to the Equipment was not incurred due to negligence or carelessness of the Customer; then Hireways can, in its sole discretion waive the Customer's liability for loss or damage.
- 27.3 Notwithstanding the provisions of clause 11.2 hereof the Customer will be liable for the full cost of repairs to or the replacement of the Equipment where the loss or damage has been caused by:-
- (a) misuse abuse, or overloading including overloading of motors or any other part of the Equipment; or
 - (b) mysterious disappearance or wrongful conversion including where Equipment is not reasonably locked and secured: or
 - (c) contravention of the conditions of this Contract; or
 - (d) violation of any law or regulation; or
 - (e) damage to tyres and tubes by punctures or cuts; or
 - (f) lack of lubrication or other routine servicing by the Customer; or
 - (g) locating, using, loading, unloading transporting the Equipment on or over water, wharves, bridges or vessels of any kind; or
 - (h) damage caused by exposure to any corrosive substance; or
 - (i) negligence of the Customer where the Customer has failed by intent or lack of due care to take all responsible precautions to protect the Equipment from loss or damage; or

- (j) consumption of alcohol and/or drugs; or
- (k) loss or damage to tools, grease guns, hoses electric cords and all other similar accessories; or
- (l) any combination of the foregoing.

28. Business Purposes

28.1 If the Customer hires or holds itself out as hiring the Equipment for the purposes of a business or in a other way which is not ordinarily used by a consumer (as defined in the CGA); or acquires or holds itself out as acquiring any consumables(e.g. goggles, earmuffs etc) for the purposes of a business or in any way acquires any consumables which are not ordinarily required by a consumer, then the Customer agrees to the following terms:

- (a) the conditions warranties and guarantees set out in the Contract and Commercial Law Act 2017 and the Consumer Guarantees Act 1993 (CGA) or implied by the common law will not apply and are excluded from this Contract and in particular no warranty is made by Hireways concerning the performance specifications or capacity of the Equipment or consumables.
- (b) the Customer may not claim on any remedies set out in the CGA from Hireways or manufacturer of the Equipment or consumables or from any manufacturer of the components or parts in the Equipment or consumables.
- (c) Hireways' liability shall be limited to replacement or repair (at Hireways option) of any Equipment or consumables it considered upon inspection to be defective.
- (d) Hireways shall not be responsible to the Customer or to third parties for any damage that may be done by Hireways' delivery and collection vehicle or Hireways' servants or agents on effecting delivery and/or collection of the Equipment.
- (e) Hireways and it's employees contractors and agents and any manufacture/s of the Equipment, will not be liable to the Customer for any loss or damage however the loss or damage arises. This exclusion of liability includes but is not limited to, consequential loss or damage caused or arising from breakdown of the Equipment, delays in manufacturing or delivery, faulty installation, unreasonable use, negligence(including a failure to do something that may have prevented a failure) faulty specifications and design, and faulty material, equipment or component parts in the Equipment or consumables. The exclusion also includes costs incurred in returning the Equipment or consumables to Hireways or to any manufacturer.
- (f) the Customer indemnifies Hireways against all claims whatsoever arising from the hire of the Equipment or acquisition of the consumables.

29. Title of Equipment

29.1 The Equipment is and will at all time remain the absolute property of Hireways.

29.2 If the Customer fails to return the Equipment to Hireways then Hireways or Hireways' agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated as the invitee of the Customer and take possession of the Equipment, without being responsible for any damage thereby caused.

30. Customer's Responsibilities

30.1 The Customer shall:

- (a) notify Hireways immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (b) use the Equipment properly and for the purpose for which it was designed acknowledging Hireways gives no warranty as the "Equipment's" capacity;
- (c) ensure only competent and qualified drivers and operators are given charge of the Equipment while in the Customer's possession and shall be responsible for all cleaning, lubrication and operating adjustments and for any damage occurring due to overloading mistakes or neglect in handling, operation etc during the hire period;
- (d) at their own expense clean and keep the Equipment in good and substantial repair and condition and proper working order and pay all costs for replacements or repair required due to fire theft accident loss or otherwise during the hire period, provided the Customer shall not undertake any repair or servicing and if any repair or servicing appears desirable shall notify Hireways immediately. On termination of the hire, the Customer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Hireways. The Customer is not authorised to pledge Hireways' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs;
- (e) provide all petrol, fuel, oil, cleaning and other materials and labour required for the operation of the Equipment and only fuel and lubricating oils approved by Hireways shall be used. The Customer shall check fuel and oil and other levels every day before starting up the Equipment;
- (f) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment and the Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Hireways 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 Customer;
- (g) accept full responsibility for and indemnify Hireways against all claims 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, whether from the negligence of the Customer or any other persons including but without limitation where the Equipment is being operated for any reason by Hireways their servants or agents;
- (h) 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;
- (i) accept full responsibility associated with any costs or liability due to the Equipment obstructing any person/s. The Customer shall also accept full responsibility associated with any costs or liability due to the Equipment being in a location that it shouldn't be or if the equipment or Hireways incurs any fines, towage or seizure costs or impoundment costs while the Equipment is in the custody of the Customer;
- (j) Forthwith on request by Hireways advise Hireways of the whereabouts of the Equipment and allow Hireways (it's agents, servants or contractors) to inspect and test the Equipment and for such purposes the Customer hereby gives irrevocable leave and licence to Hireways (its' servants agents and contractors) to take possession of and remove the same and as agent of the Customer, enter upon any premises where the Equipment or any part of the same may be;
- (k) Accept full responsibility in compliance with all current codes of practice and regulations, including the Health & Safety at Work Act 2015, current licences such as time licences and road user charges where necessary;

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- (l) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (m) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (n) not use or carry any illegal, prohibited, or dangerous substance in, or on, the Equipment;
 - (o) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - (p) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (q) satisfy itself prior to taking delivery that the Equipment is suitable for its purposes.
- 30.2 The Customer of Vehicle Hire shall ensure that:
- (a) the water in the radiator and battery of the Vehicle is maintained at the proper level; and
 - (b) the oil in the Vehicle is maintained at the proper level; and
 - (c) the tyres are maintained at their proper pressure.
 - (d) The Customer shall ensure that all reasonable care is taken in handling and parking the Vehicle and that it is left securely locked when not in use.
 - (e) The Customer shall be liable for any parking or traffic infringement and will supply relevant details as required by the Police and/or Hireways relating to any such parking or traffic infringement and offences, impoundment, towage and storage.
- 30.3 The Customer of Vehicle Hire shall not:
- (a) sublet or Hire the Vehicle to any other person; or
 - (b) permit the Vehicle to be operated without their authority and then only by an authorised driver named on the front of this Agreement; or
 - (c) operate the Vehicle or permit it to be operated in any race, speed test, rally, or contest, or on any closed road or non-public roadway; or
 - (d) operate the Vehicle or permit it to be operated to propel or tow any other Vehicle; or
 - (e) 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
 - (f) drive or permit the Vehicle to be driven by any person if at the time of his driving the Vehicle the Customer or other person is not the holder of current driver's licence appropriate for the Vehicle.
 - (g) carry any animals in any vehicle without the written permission of Hireways.
- 31. Hireways' Right to Terminate**
- 31.1 Without prejudice to any other remedies available to Hireways and notwithstanding any period of hire specified, Hireways may terminate this hire Contract without payment of compensation:
- (a) At any time by giving the Customer two (2) hours (or if Hireways deems it appropriate such lesser period) notices of their intention to terminate. Such notice need not be in writing and shall be deemed sufficiently given if made to the Customer; or
 - (i) the operator for the time being of the Equipment; or
 - (ii) the occupier for the time being of the premises at which the Equipment is located.

(Provided that notice is deemed to be given if the Equipment is removed with no person in attendance)
 - (b) Without notice if the Customer shall commit any breach of these hire Contract terms and conditions or the Customer commits any act of bankruptcy or being a company an application is made or a resolution is passed for its winding up or being a company a receiver, manager, liquidator (provisional or otherwise) or similar person of their assets or any of them is appointed or if any execution or distress shall be levied upon the Equipment or if any judgement against the Customer shall remain unsatisfied for seven (7) days or more or if the Customer makes an assignment or compromise for the benefit of their creditors or being a company is placed under statutory management or if it ceases to carry on business.
- 31.2 Upon the termination of the hire period Hireways (it's agents, servants or contractors) shall be entitled to take possession of the Equipment; for this purpose the Customer hereby gives irrevocable leave and licence to Hireways (it's agents, servants or contractors) to enter upon any land or premises of the Customer, or any other place (as the agent of the Customer) where the Equipment or any Hireways in respect of any claims, damages or expenses made against or incurred by Hireways arising out of any action taken under Section 6 of this Contract.
- 32. Cancellation**
- 32.1 In the event that the Customer cancels delivery of Equipment the Customer shall be liable for any loss incurred by Hireways (including, but not limited to, any loss of profits) up to the time of cancellation.
- 33. Wet Hire**
- 33.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of Hireways and operates the Equipment in accordance with the Customer's instructions. As such Hireways shall not be liable for any actions of the operator in following the Customer's instructions.