Presco Hire Limited – Terms & Conditions of Hire

1. Definitions

1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, hire form, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 **"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 using the Supplier's 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 making enquiries via the website.**

1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier 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 **"Equipment"** shall mean all Equipment (including any accessories) supplied on hire by the Supplier to the Customer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Customer.

1.5 **"Minimum Hire Period"** shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Customer.

1.6 **"Price"** shall mean the cost of the hire (including any Goods and Services Tax (GST) where applicable) of the Equipment as agreed between the Supplier and the Customer subject to clause 6 of this Contract.

1.7 **"Site"** means the location/s at which the Equipment is to be operated.

1.8 **"Supplier"** shall mean Presco Hire Limited, its successors and assigns.

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 any 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 Equipment on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Equipment requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery.

2.6 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. Authorised Representatives

3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Equipment on the Customer's behalf and/or to request any variation to the Equipment supplied on the Customer's behalf (such authority to continue until all requested work have been completed or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly authorised representative).

3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.

3.3 The Customer specifically acknowledges and 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 Equipment or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

4.1 The Customer acknowledges and accepts that the Supplier 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 the Supplier 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 the Supplier in respect of the Equipment hire and/or/Services.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Customer shall give the Supplier 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 the Supplier as a result of the Customer's failure to comply with this clause.

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6. Price and Payment

6.1 At the Supplier's sole discretion the Price shall be either;
(a) as indicated on invoices provided by the Supplier to the Customer in respect of Equipment supplied; or
(b) the Supplier's current Price, at the date of Delivery of the Equipment, according to the Supplier's current price list; or
(c) the Supplier's quoted price (subject to clause 6.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within thirty (30) days.

6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price.

6.3 At the Supplier's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Customer by within thirty (30) days of the return of the Equipment, provided that the Customer has complied with their obligations hereunder. The deposit may be used to offset any applicable Price payable by the Customer under clause 14.3, and any outstanding balance thereof shall be due as per clause 6.4.

6.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
(a) by way of instalments in accordance with the Supplier's payment schedule;
(b) payment for approved Customers shall be 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;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.

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

6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.

6.7 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.

6.8 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer 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 hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

6.10 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.

7. Hire Period

7.1 Where agreed, for Equipment in which a timing device is installed the hire period may be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession as agreed in writing by both parties.

7.2 Where the Equipment does not have a timing device installed hire Price shall commence from the time the Equipment departs 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.

7.3 At the Supplier's sole discretion, the date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.

7.4 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies the Supplier immediately, hiring Price 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.

7.5 Off-hire receipts will only be issued when the Equipment has been either collected by the Supplier or returned to the Supplier's premises.

8. Delivery

8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Equipment at the Supplier's address; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.

8.2 At the Supplier's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.

8.3 The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

8.4 Any time specified by the Supplier for Delivery of the Equipment is an estimate only and the Supplier 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 the Supplier is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

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9. Risk

9.1 The Supplier retains ownership of the Equipment nonetheless; all risk for the Equipment passes to the Customer on Delivery.

9.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier 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.

9.3 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 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.

9.4 The Customer acknowledges that the Equipment is potentially dangerous and hazardous and the Customer warrants that it will not use the Equipment in any manner or permit the Equipment to be used in any manner which may cause loss or damage to the Customer, the Supplier or any third party.

10. Damage Waiver/Insurance

10.1 Loss, Theft, Damage Waiver (LTD Waiver) **is not insurance,** but is an agreement by the Supplier to limit the Customer's liability in certain circumstance for loss, theft, or damage, to the Supplier's Equipment to an amount called the LTD Waiver Excess. The LTD Excess is explained below.

10.2 An LTD Waiver Fee will be automatically charged to the Customer in addition to the Customer's hire charges and is set out in the hire schedule.

10.3 The Customer shall not be required to pay the LTD Waiver Fee if the Customer produces a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment.

10.4 Where the Customer has paid the LTD Waiver Fee, the Supplier will waive the Supplier's right to claim against the Customer for loss, theft or damage to the Equipment if:

(a) the Customer has promptly reported the incident to the Police and provided the Supplier with a written Police report;
(b) the Customer has co-operated with the Supplier and provided the Supplier with details of the incident, including any written or photographic evidence that the Supplier requires;
(c) the loss, theft or damage does not fall into one or more of the circumstances in clause 10.6; and
(d) the Customer has paid to the Supplier the LTD Waiver Excess.

10.5 The LTD Waiver Excess for each item of Equipment is the amount equal to one thousand dollars ($1000.00) or (if the replacement cost of the Equipment is less than one thousand dollars ($1000.00)).

10.6 Even if the Customer has paid the LTD Waiver Fee, the Supplier shall not waive the Supplier's rights to claim against the Customer for loss, theft or damage to the Equipment and the LTD Waiver shall not apply if the loss, theft or damage:

(a) has arisen as a result of the Customer breaching a clause of this hire Contract;
(b) has been caused by a negligent act or omission by the Customer;
(c) has arisen as a result of the Customer's use of the Equipment in violation of any law(s);
(d) has been caused by the Customer's failure to use the Equipment for its intended purpose or in accordance with the Supplier's instructions or the manufacturer's instructions;
(e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;
(f) has been caused by a lack of lubrication or a failure to service or properly maintain the Equipment;
(g) has been caused by a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;
(h) has been caused by the overloading of the Equipment or any components thereof;
(i) is to motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extension leads with the electrical Equipment;
(j) is caused by exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc;
(k) is caused by vandalism;
(l) is to tyres or tubes;
(m) is to glass; or
(n) is caused by the wilful actions of the Customer, their employees, sub-contractors or agents.

10.7 The Customer acknowledges and 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, damage or loss to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons particularly in the event that clauses 10.1 to 10.6 are voided for any reason.

11. Title

11.1 The Equipment is and will at all times remain the absolute property of the Supplier.

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

11.3 The Customer 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.

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

12.1 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

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(b) a security interest is taken in all Equipment that have previously been supplied and that will be supplied in the future by the Supplier to the Customer, and the proceeds from such Equipment as listed by the Supplier to the Customer in invoices rendered from time to time.

12.2 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 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 Equipment charged thereby;

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment or the proceeds of such Equipment in favour of a third party without the prior written consent of the Supplier.

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

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

12.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

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

12.7 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.

12.8 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period 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 the Supplier agreeing to supply the 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

13.2 The Customer 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 Customer irrevocably appoints the Supplier and each director of the Supplier 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. Customer's Responsibilities

14.1 The Customer shall:

(a) satisfy itself at commencement that the Equipment is suitable for its purposes;

(b) notify the Supplier 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;

(c) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);

(d) 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;

(e) ensure that:

(i) 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 to operate the Equipment and shall provide evidence of the same to the Supplier upon request;

(ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment; and

(iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.

(f) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Supplier relating to any such matters or occurrences;

(g) comply with all workplace health and safety laws relating to the Equipment and its operation;

(h) 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;

(i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;

(j) 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;

(k) 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;

(l) indemnify and hold harmless the Supplier in respect of all claims arising out of the Customer's use of the Equipment.

14.2 The Customer shall not:

(a) 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;

(b) exceed the recommended or legal load and capacity limits of the Equipment;

(c) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;

(d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

14.3 Immediately on request by the Supplier the Customer will pay:

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(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:
  (i) the ordinary use of the Equipment;
  (ii) the negligence of the Customer or the Customer's agent;
  (iii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
(d) the cost of fuels and consumables (including, but not limited to, sand paper, cutting wheels, nails and the like) provided by the Supplier and used by the Customer;
(e) any:
  (i) lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  (ii) costs incurred by the Supplier in picking up and returning the Equipment to the Supplier's premises if the Customer does not return the Equipment to the Supplier's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
  (iii) insurance excess payable in relation to a claim made by either the Customer or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Supplier's.

15. Defects

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

16. Warranty

16.1 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 Customer shall indemnify and hold harmless the Supplier in respect of all claims arising out of the use of the Equipment.

17. Consumer Guarantees Act 1993

17.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 **("CGA")** in all cases except where the Customer is not contracting as a consumer within the meaning of the CGA.

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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 If the Customer owes the Supplier any money the Customer 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).

18.3 Further to any other rights or remedies the Supplier may have under this Contract, if the Customer has made payment to the Supplier, 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 the Supplier 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 the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer 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 Customer will be unable to make a payment when it falls due;
(b) the Customer has exceeded any applicable credit limit provided by the Supplier;
(c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(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 the Supplier may have, if at any time the Customer 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 Equipment on hire to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

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

19.3 In the event that the Customer wishes to cancel Delivery of the Equipment then the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.

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20. Privacy Policy

20.1 All emails, documents, images or other recorded information held or used by the Supplier is **"Personal Information**" as defined and referred to in clause 20.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act 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 the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier 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 the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")

If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

20.3 The Customer authorises the Supplier or the Supplier's 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
  (ii) for the purpose of marketing products and services to the Customer.
(b) disclose information about the Customer, whether collected by the Supplier from the Customer 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 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 2020.

20.5 The Customer shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.

20.6 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

20.7 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.

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 the Supplier may have notice of the Trust, the Customer covenants with the Supplier 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 the Supplier (the Supplier 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. General

23.1 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.

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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 of New Zealand.

23.3 Subject to the CGA, the Supplier shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer 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).

23.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

23.5 The Customer cannot assign or licence without the written approval of the Supplier.

23.6 The Supplier may elect to subcontract out any part of the provision 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 the Supplier's sub-contractors without the authority of the Supplier.

23.7 The Customer agrees that the Supplier 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 the Supplier to provide Equipment to the Customer.

23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Supplier.

23.9 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.

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