



CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached. This is a Credit Account Application Form under the Construction Contracts Act 2002. Please read clause 23 on the reverse.

Client Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:				
Full or Legal Name:				
Trading Name: (If different from above)				
Physical Address:				Postcode:
Billing Address:				Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: (please complete if you are an Individual)				
D.O.B.:			Driver's Licence No:	
Business Details: (please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)				
Company Number:			Date Incorp. (current owners):	
Nature of Business:				GST No: (if applicable)
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="radio"/> Rented <input type="radio"/> Owned <input type="radio"/> Mortgaged (to whom):				
Directors / Owners / Trustee (if more than two, please attach a separate sheet)				
(1) Full Name:			D.O.B.:	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.:	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="radio"/> 20 Days from EOM <input type="radio"/> 7 Days following invoice <input type="radio"/> COD <input type="radio"/> Other:				
Purchase Order Required? <input type="radio"/> YES <input type="radio"/> NO			Accounts to be emailed? <input type="radio"/> YES <input type="radio"/> NO	
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
Trade References: (please provide companies that are willing to do trade references)				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of MetroHire Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): _____ SIGNED (MTH): _____

Name: _____ Name: _____

Position: _____ Position: _____

Date: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /



Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of MetroHire Limited and its successors and assigns ("MTH") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods / equipment and/or services to

[] ("the Client") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to MTH of all monies which are now owing to MTH by the Client and all further sums of money from time to time owing to MTH by the Client in respect of goods / equipment and services supplied or to be supplied by MTH to the Client or any other liability of the Client to MTH, and the due observance and performance by the Client of all its obligations contained or implied in any contract with MTH, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to MTH the Guarantor will immediately on demand pay the relevant amount to MTH. In consideration of MTH agreeing to supply the Goods / equipment to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to MTH registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints MTH and each director of MTH as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which MTH may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA or any other law; or
 - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** MTH on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, MTH in connection with:
 - the supply of goods / equipment and/or services to the Client; or
 - the recovery of monies owing to MTH by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to MTH's nominees' costs of collection and legal costs; or
 - monies paid by MTH with the Client's consent in settlement of a dispute that arises or results from a dispute between, MTH, the Client, and a third party or any combination thereof, over the supply of goods / equipment and/or services by MTH to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood MTH's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to MTH by the Client and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on MTH's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to MTH, each Guarantor shall be a principal debtor and liable to MTH accordingly.
- If any payment received or recovered by MTH is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and MTH shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to MTH.**
- I/we irrevocably authorise MTH to obtain from any person or company any information which MTH may require for credit reference purposes. I/We further irrevocably authorise MTH to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with MTH as a result of this Guarantee and Indemnity being actioned by MTH.
- The above information is to be used by MTH for all purposes in connection with MTH considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1
 SIGNED: _____
 FULL NAME: _____
 HOME ADDRESS: _____
 DATE OF BIRTH: _____
 SIGNATURE OF WITNESS: _____
 NAME OF WITNESS: _____
 OCCUPATION: _____
 PRESENT ADDRESS: _____
 EXECUTED as a Deed this day of 20____

GUARANTOR-2
 SIGNED: _____
 FULL NAME: _____
 HOME ADDRESS: _____
 DATE OF BIRTH: _____
 SIGNATURE OF WITNESS: _____
 NAME OF WITNESS: _____
 OCCUPATION: _____
 PRESENT ADDRESS: _____
 EXECUTED as a Deed this day of 20____

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
 2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

MetroHire Limited Terms & Conditions

1. General

- 1.1 These Terms govern and apply to the hire of all Equipment from MTH to the Hirer and the provision of any Services by MTH to the Hirer regardless of whether or not the Hirer has signed the Terms – the Hirer's acceptance of these Terms will be deemed by the Hirer using or continuing to use MTH's Equipment and/or Services.
- 1.2 Any order or request accepted by MTH for the hire of Equipment constitutes a Hire Contract governed by these Terms.
- 1.3 These Terms supersede all other terms, conditions and agreements between MTH and Hirer and any changes must be agreed upon in writing by MTH.
- 1.4 MTH reserves the right to update these Terms, with the changes becoming effective upon notice to the Hirer or at such time MTH provides further Equipment or Services to the Hirer.

2. Definitions and Interpretation

- 2.1 In these Terms:
 - 2.1.1 **Additional Payments** means any of the payments that may become payable by the Hirer other than the Hire Charges as listed in clause 6.1;
 - 2.1.2 **Business Day** means a day other than Saturday, Sunday or public or anniversary holiday in MTH's location from which the Equipment is hired;
 - 2.1.3 **CGA** means the Consumer Guarantees Act 1993;
 - 2.1.4 **Cookies** means small files which are stored on a user's computer and are designed to hold a modest amount of data (including Personal Information) specific to a particular Hirer and website, and can be accessed either by the web server or the Hirer's computer;
 - 2.1.5 **Credit Account Application** means an application for a credit account with MTH;
 - 2.1.6 **Default Interest Rate** means 5% per annum greater than MTH's business overdraft interest rate;
 - 2.1.7 **Equipment** means all equipment, machinery, accessories or any other goods hired by the Hirer from MTH (but not including any Equipment that is exclusively governed by other terms);
 - 2.1.8 **Event of Default** has the meaning given in clause 25.1;
 - 2.1.9 **FTA** means the Fair Trading Act 1986;
 - 2.1.10 **MTH** means MetroHire Limited, its successors and assigns or any person acting on behalf of and with the authority of MetroHire Limited.
 - 2.1.11 **GST** means goods and services tax payable under the Goods and Services Tax Act 1985;
 - 2.1.12 **Hire Charges** means the charges for the hire of the Equipment and/or the provision of the Services as agreed between MTH and the Hirer;
 - 2.1.13 **Hire Contract** means any contract for the hire of Equipment made between MTH and the Hirer and includes the Hire Form and these Terms;
 - 2.1.14 **Hire Form** means the hire form or other document agreed between MTH and the Hirer or other communication between MTH and the Hirer, setting out the key terms relating to the hire of the Equipment and/or the provision of Services;
 - 2.1.15 **Hire Period** means the period of the hire of the Equipment, as more particularly described in clause 10;
 - 2.1.16 **Hirer** means the person or entity hiring the Equipment (or acquiring the Services) including the Hirer's successors;
 - 2.1.17 **HSWA** means the Health and Safety at Work Act 2015;
 - 2.1.18 **Insurance Contribution Fee** means the fee payable to MTH as set out in the Hire Form;
 - 2.1.19 **PPSA** means the Personal Property Securities Act 1999;
 - 2.1.20 **Services** means any services MTH provides to the Hirer in connection with the hire of the Equipment;
 - 2.1.21 **Site** means any site to which the Equipment is to be delivered and used;
 - 2.1.22 **Terms** means these terms and conditions;
 - 2.1.23 **Wet Hire** means that the Equipment is hired with an operator who is an employee of MTH.

2.2 In these Terms

- 2.2.1 Headings are for convenience only and will not affect the interpretation of these Terms;

- 2.2.2 References to clauses are to clauses of these Terms;
- 2.2.3 All references to legislation are references to New Zealand legislation in force and include any subordinate legislation, by-law, regulation, order, statutory instrument or determination made under it, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;
- 2.2.4 The term "includes" or "including" (or similar terms) is deemed to be followed by the words "without limitation"; and
- 2.2.5 Where more than one person is the Hirer, each person shall be jointly and severally liable for all obligations under these Terms.

3. Hire of Equipment

- 3.1 The Equipment and Services are as described in the Hire Form or as otherwise agreed by MTH.
- 3.2 MTH reserves the right to decline any order or request for the hire of Equipment or provision of Services.
- 3.3 MTH may require the Hirer to pay a bond as a condition of the hire of the Equipment, which shall be refundable in accordance with clause 5.4.
- 3.4 MTH may require a guarantee to be provided by the Hirer's directors and/or shareholders as a condition of the hire of the Equipment.
- 3.5 If MTH cannot provide the Equipment or Services to the Hirer, then MTH may cancel any order by writing in notice to the Hirer and refund any prior payments made by the Hirer, but otherwise MTH will have no further liability to the Hirer.

4. Hire Charges

- 4.1 The Hire Charges are:
 - 4.1.1 As set out in the Hire Form; or
 - 4.1.2 Where no price is stated in the Hire Form, or where there is no Hire Form, the price according to MTH's current price list; or
 - 4.1.3 As otherwise agreed by MTH.
- 4.2 The Hire Charges are exclusive of GST, payable by the Hirer unless otherwise agreed.
- 4.3 Hire Charges are based on the duration of the hire as follows:
 - 4.3.1 1 day hire = 24-hours and a maximum of 6 hours on the Equipment's clock;
 - 4.3.2 1 week hire = 7 consecutive 24-hour periods (including weekends and public holidays) and a maximum of 30 hours on the Equipment's clock;
 - 4.3.3 1 month hire = 28 consecutive 24-hour periods (including weekends and public holidays) and a maximum of 120 hours on the Equipment's clock;
 - 4.3.4 Extra hours on the Equipment's clock will be charged additional at a pro-rata rate set by MTH.
- 4.4 Where the Equipment has an odometer, MTH has the right to include a charge per kilometre in the Hire Charge.
- 4.5 Any disputes arising in relation to the Hire Charges must be notified in writing by the Hirer to MTH within 5 working days of the date of the Hire Contract, otherwise the Hirer is deemed to have accepted the Hire Charges.

5. Payment

- 5.1 The Hirer shall pay the Hire Charges as specified in the Hire Form:
 - 5.1.1 In full without deduction or set-off; and
 - 5.1.2 To MTH's nominated bank account or by such other method approved by MTH; and
 - 5.1.3 By electronic/online banking, debit card, credit card (subject to any applicable surcharges) or by such other method approved by MTH.
- 5.2 Where the Hirer is a credit account customer, the Hire Charges are payable by the 20th of the month following the issue of the invoice unless otherwise agreed.
- 5.3 Where the Hirer is not a credit account customer, the Hire Charges are payable prior to commencement of hire or on such other date(s) set out on the Hire Form.

- 5.4 Any bond paid by the Hirer will be refunded if the Equipment is returned in accordance with these Terms subject to deductions for outstanding amounts owing by the Hirer to MTH.
- 5.5 MTH reserves the right to allocate and re-allocate any payment received from the Hirer as it sees fit.
- 6. Additional Payments by Hirer**
- 6.1 In addition to the Hire Charges the Hirer shall on demand pay:
- 6.1.1 The cost of delivering or collecting the Equipment;
- 6.1.2 The cost of repairing or replacing the Equipment where the Equipment is damaged, breaks down or is lost or stolen (except where this is MTH's responsibility under clause 14.2 or where such damage is covered by the Insurance Contribution Fee under clause 13);
- 6.1.3 The Hire Charge on an ongoing basis until the damaged, broken down, lost or stolen Equipment has been replaced or repaired to its original condition;
- 6.1.4 The cost of replacing the Equipment where the Equipment is not returned by the Hirer to MTH for any reason;
- 6.1.5 The cost of remedying any failure of the Hirer to return the Equipment in compliance with these Terms;
- 6.1.6 If required, the cost of cleaning the Equipment if MTH deems, in its absolute discretion, that the Equipment is excessively dirty upon return;
- 6.1.7 The cost of recovering possession of the Equipment;
- 6.1.8 The cost of any fuel used by the Hirer in the operation of the Equipment and not replaced on return of the Equipment;
- 6.1.9 The cost of any other consumables used by the Hirer in the course of operating the Equipment;
- 6.1.10 The cost of repair and/or replacement of any of the parts of the Equipment (including tyres and road service) required due to the Hirer's use of the Equipment;
- 6.1.11 Any costs incurred in enforcing these Terms including any administrative fees and legal fees incurred by MTH;
- 6.1.12 Any costs incurred by MTH in registering or protecting its interest in the Equipment under clause 18;
- 6.1.13 Any costs incurred during the Hire Period by the Hirer or MTH for any parking or traffic infringements, fines, penalties, levies, impoundment, towage and storage costs;
- 6.1.14 Any other taxes, duties or charges payable in respect of the Hire Contract or arising from the Hirer's use of the Equipment.
- 6.2 Any Additional Payments are payable by the Hirer prior to or on the due date as set out in the relevant invoice issued by MTH.
- 6.3 Interest will accrue on the outstanding amounts at the Default Interest Rate.
- 7. Hirer Warranties**
- 7.1 The Hirer warrants that all information provided to MTH is true and accurate.
- 8. Hirer Acknowledgements**
- 8.1 Any advice, recommendation, information or assistance provided by MTH is given in good faith and is based on MTH's own knowledge and experience. The Hirer acknowledges that it is responsible for ensuring that:
- 8.1.1 The Equipment is suitable for its purposes;
- 8.1.2 The Site is suitable for the Equipment;
- 8.1.3 The use or installation of any Equipment at the Site will be in compliance with all relevant covenants and restrictions affecting the Site and any other legal or regulatory requirement.
- 8.2 MTH is not responsible for contacting or providing information to the Hirer's insurer.
- 9. Delivery and Return of Equipment**
- 9.1 Where MTH is responsible for arranging the delivery and/or pickup of the Equipment, MTH will endeavour to deliver the Equipment at any agreed time but will not be responsible for any loss or damage sustained by the Hirer due to any delays.
- 9.2 Where the Hirer arranges the delivery and/or pick up of the Equipment, MTH shall not be liable for any loss or damage to the Equipment.
- 9.3 Delivery will be deemed complete when the Equipment arrives at the Site.
- 9.4 MTH may deliver the Equipment in instalments.
- 9.5 MTH shall not be liable for any loss or damage to the Site during delivery except where this is caused by MTH's negligence.
- 9.6 The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever and wherever it is tendered for delivery. MTH shall be entitled to assume that any person accepting delivery of the Equipment is authorised to do so on the Hirer's behalf.
- 9.7 The Hirer shall inspect the Equipment on delivery and notify MTH of any alleged damage to the Equipment or any other alleged defect, shortage in quantity, damage or failure to comply with the description.
- 9.8 The Hirer is responsible for loading and unloading any of the Equipment at the Site, unless agreed otherwise.
- 10. Hire Period**
- 10.1 The Hire Period will commence from the time the Equipment leaves MTH's premises and will continue until the time that the Equipment is returned to MTH's premises.
- 10.2 If the Hirer fails to return, or make the Equipment available for MTH to collect at the end of the agreed hire period without MTH's consent, then without limiting MTH's rights, until such time as the Equipment is returned or made available for collection the Hirer will continue to pay to MTH the Hire Charges.
- 10.3 The Hirer will return or make the Equipment available for collection by MTH at the end of the Hire Period in such condition and repair required by these Terms.
- 11. Use and Operation of the Equipment**
- 11.1 The Hirer shall:
- 11.1.1 Maintain the Equipment in the same order, condition and repair than at commencement of the Hire Period including repairing and/or replacing any parts of the Equipment which require repair or replacement, but only after first having obtained MTH's prior written consent on each occasion;
- 11.1.2 Keep the Equipment clean during the Hire Period;
- 11.1.3 Keep the Equipment secure and protected against vandalism, damage or theft including but not limited to ensuring that the Equipment is locked and stored in secured premises when not in use;
- 11.1.4 Pay for all fuel used in the operation of the Equipment and ensure the Equipment is returned to MTH with a full fuel tank;
- 11.1.5 Use the Equipment only at the Site;
- 11.1.6 Use the Equipment only for its intended purpose;
- 11.1.7 Use the Equipment in accordance with any relevant laws, regulations and requirements;
- 11.1.8 Operate the Equipment in accordance with MTH's and manufacturer's recommendations and requirements;
- 11.1.9 Obtain at its own expense all certificates, licences and approvals that may be required for the use and operation of the Equipment and provide MTH with evidence of the same upon request;
- 11.1.10 Not operate the Equipment outside its agreed purposes or rated capacity or in a manner likely to cause undue wear and tear;
- 11.1.11 Inspect the Equipment regularly and carry out any necessary servicing to the Equipment including but not limited to maintaining water, oil, grease and fluid levels;
- 11.1.12 Ensure that the Equipment's warrant or certificate of fitness (if applicable) and registration is current and valid at all times during the Hire Period.
- 11.2 The Hirer shall only permit suitably qualified and competent individuals to operate the Equipment strictly in accordance with these Terms who are fully licenced with the appropriate class of licence and shall provide MTH with evidence of the same upon request.
- 11.3 The Hirer shall not:
- 11.3.1 Operate the Equipment whilst it is in a defective, damaged or in a dangerous condition;
- 11.3.2 Exceed the Equipment's recommended or legal load and capacity limits;
- 11.3.3 Use the Equipment under the influence of drugs or alcohol;
- 11.3.4 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment; or
- 11.3.5 Modify, tamper, repair or alter the Equipment without the prior written approval of MTH; or
- 11.3.6 Relocate the Equipment from the Site without the prior written approval of MTH; or
- 11.3.7 Carry any animals in the Equipment without MTH's prior written consent.
- 11.4 The Hirer shall on MTH's request provide MTH with such information that MTH requires in relation to the Equipment, including details of the Site(s) at which the Equipment is used.

12. **Wet Hire**
- 12.1 In the event of Wet Hire, the operator of the Equipment remains an employee of MTH and operates the Equipment in accordance with the Hirer's instructions.
- 12.2 MTH shall not be liable for any actions of the operator in following the Hirer's instructions.
13. **Insurance Contribution Fee**
- 13.1 MTH requires the Hirer to pay the Insurance Contribution Fee as a condition of the hire of the Equipment, unless the Hirer obtains and provides an insurance certificate that is acceptable to MTH in its absolute discretion that covers the Equipment during the Hire Period for its full replacement value.
- 13.2 The Insurance Contribution Fee is non-refundable and is not a substitution for insurance.
- 13.3 The Insurance Contribution Fee covers loss or damage to the Equipment caused by fire, storm, flooding, earthquake or theft from a secure Site only.
- 13.4 The Insurance Contribution Fee does not cover damage, including damage to tyres, tracks, glass, paint, panel(s) or vandalism, motor vehicle accidents or theft or damage to any accessories or Equipment.
- 13.5 In the event that MTH makes an insurance claim in connection with the Hirer's hire of the Equipment, an excess of \$2500 is payable by the Hirer to MTH.
14. **Damage – Inherent Defects**
- 14.1 The Hirer shall notify MTH immediately on the occurrence of:
- 14.1.1 Damage to the Equipment;
- 14.1.2 The Equipment breaking down;
- 14.1.3 The loss of or theft of the Equipment; or
- 14.1.4 Any accident in connection with the Equipment.
- 14.2 If the Equipment is damaged, breaks down or fails to operate due to any defects arising from normal wear and tear or an inherent fault or any other fault not detectable at the beginning of the Hire Period, MTH may repair or replace the Equipment at its expense (and suspend the Hire Charges).
- 14.3 Notwithstanding clause 14.2, if repair or replacement is uneconomical, impractical or impossible (in each case as determined in MTH's absolute discretion) then MTH can terminate the hire of the Equipment and collect the Equipment.
15. **Access**
- 15.1 The Hirer grants MTH and its employees, representatives and agents access to the Site and the Equipment (whether or not during business hours) to deliver, collect, inspect, test, adjust, maintain, repair or replace the Equipment, or to exercise any of its rights, remedies or obligations under these Terms.
16. **Assignment and no dealing**
- 16.1 The Hirer may not assign any of its rights under any Hire Contract or these Terms, or sublet, sell, cross-hire, charge or otherwise deal with the Equipment without MTH's prior written consent.
- 16.2 The Hirer shall keep the Equipment in its own possession and control and shall not allow any person other than its properly qualified or licensed employees or contractors to use it.
- 16.3 MTH may assign, sub-contract or license all or any part of its rights and/or obligations under any Hire Contract without the Hirer's consent.
17. **Health and Safety at Work Act**
- 17.1 To the extent permitted by law MTH is not responsible for any obligations imposed on the Hirer pursuant to the HSWA.
18. **Title and Security Interest**
- 18.1 Each Hire Contract is a contract for the right to use Equipment only and MTH at all times retains ownership of the Equipment.
- 18.2 The parties acknowledge that the hire of the Equipment may create a security interest in the Equipment in favour of MTH under the PPSA and that in those circumstances the Hire Contract creates a security agreement for the purposes of the PPSA. MTH may register a financing statement in respect of its security interest in the Equipment.
- 18.3 The Hirer shall do all things that MTH reasonably requires to ensure that MTH has a perfected security interest in the Equipment (including providing and updating any debtor information). The Hirer agrees that it will not register a financing change statement or a change demand in respect of the Equipment.
- 18.4 Sections 114(1)(a), 133 and 134 of the PPSA shall not apply to any Hire Contract or any security interest and the Hirer waives its rights under the following sections of the PPSA: 116, 120(2), 121, 122, 125, 129, 131, and 132. The Hirer waives its right to a verification statement upon registration of MTH's security interest.
19. **Onboard GPS Devices**
- 19.1 The Hirer acknowledges and accepts that the Equipment may have an onboard GPS device which enables MTH to receive certain information from the Equipment including its location, speed, battery voltage and ignition status.
- 19.2 The Hirer is deemed to have consented to:
- 19.2.1 MTH's use of onboard GPS devices in the equipment during the Hire Period; and
- 19.2.2 MTH collecting, using and retaining data from the onboard GPS device; and
- 19.2.3 MTH's ownership of the data,
- subject to the Hirer's rights as set out in clause 31.
20. **Warranties and Guarantees**
- 20.1 MTH warrants as follows (subject to the other provisions of this clause 20 and clause 21):
- 20.1.1 It has the right to hire the Equipment to the Hirer;
- 20.1.2 The Equipment matches the description;
- 20.1.3 The Equipment complies with any agreed specifications.
- 20.2 Where the Hirer is a consumer (as defined in the CGA) certain guarantees may also apply in respect of the hire of the Equipment and the provision of the Services pursuant to the CGA. These guarantees may only be limited by clause 21.4.
21. **Exclusion of Terms**
- 21.1 Apart from the warranties or guarantees described in clause 20 or any express warranties provided by MTH, MTH makes no representations and give no assurances, warranties or guarantees to the Hirer in relation to the hire of the Equipment and/or the Services. To the maximum extent permitted by law, any representation, assurance, warranty or guarantee implied by law, custom or practice is excluded.
- 21.2 To the maximum extent permitted by law none of MTH's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by any of MTH's directors in writing.
- 21.3 Where the Hirer acquires the Equipment and/or acquires the Services in trade, MTH and the Hirer agree to contract out of the following sections of the FTA in accordance with section 5D of the FTA:
- 21.3.1 Section 9: Misleading and deceptive conduct generally;
- 21.3.2 Section 12A: Unsubstantiated representations;
- 21.3.3 Section 13: False or misleading representations.
- 21.4 Notwithstanding clause 20.2, where the Hirer hires the Equipment or acquires the Services in trade, MTH and Hirer agree to contract out of the CGA in accordance with section 43 of the CGA.
- 21.5 The parties agree that it is fair and reasonable to be bound by clauses 21.3 and 21.4.
22. **Liability**
- 22.1 MTH shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach of these Terms by MTH
- 22.2 MTH's aggregate liability in respect of a Hire Contract shall be limited to the Hire Charges in respect of that Hire Contract.
23. **Errors and Omissions**
- 23.1 Without prejudice, MTH does not accept any liability in respect of any alleged or actual error(s) and/or omission(s):
- 23.1.1 resulting from an inadvertent mistake made by MTH in the formation and/or administration of the Hire Contract; and/or
- 23.1.2 contained in/omitted from any literature (hard copy and/or electronic) supplied by MTH in respect of the Equipment hire and/or Services.

- 23.2 In the event that such an error and/or omission occurs in accordance with clause 23.1, and is not attributable to the negligence and/or wilful misconduct of MTH, the Hirer shall not be entitled to treat the Hire Contract as repudiated nor render it invalid.
- 24. Indemnities**
- 24.1 The Hirer indemnifies MTH against any loss, damage, liabilities, costs or expenses in respect of:
- 24.1.1 Any injury or damage caused to MTH or its property or any third party or third party's property arising from the use of the Equipment by the Hirer; and
- 24.1.2 Any breach of these Terms by the Hirer.
- 25. Default**
- 25.1 The Hirer commits an Event of Default if:
- 25.1.1 The Hirer fails to make payment in accordance with these Terms;
- 25.1.2 The Hirer breaches any of these Terms and such breach is irremediable or is not remedied within 5 Business Days of MTH giving notice to the Hirer requiring it to be remedied;
- 25.1.3 In MTH's opinion the Hirer will be unable to pay its debts as they fall due;
- 25.1.4 The Hirer is declared bankrupt;
- 25.1.5 The Hirer 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;
- 25.1.6 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any of the Hirer's assets.
- 25.2 Where the Hirer acquires the Equipment and/or Services for the purposes of a business the Hirer also commits an Event of Default if it ceases or threatens to cease to carry on business.
- 25.3 If an Event of Default occurs, without prejudice to any other rights or remedies available to MTH under these Terms or otherwise, MTH may:
- 25.3.1 Terminate any Hire Contract by giving notice to the Hirer; and
- 25.3.2 Recover the Equipment.
- 25.4 Termination will not affect any rights that have accrued to the date of termination and in particular MTH's right to recover any unpaid Hire Charges and any other loss, damage, costs and expenses provided for in these Terms or any of these Terms which expressly or by implication survives termination.
- 26. Use of Third Parties**
- 26.1 MTH may subcontract with any other person, firm or company to provide the Equipment or the Services.
- 27. Collection, Use and Disclosure of Information**
- 27.1 The Hirer agrees that MTH may collect personal information from the Hirer that MTH reasonably requires to:
- 27.1.1 Provide the Equipment and/or the Services;
- 27.1.2 Assess the Hirer's creditworthiness;
- 27.1.3 Administer and enforce these Terms and/or any Hire Contract;
- 27.1.4 Maintain credit records held by MTH, any related company and external agencies;
- 27.1.5 Conduct market research, data processing and statistical analysis; and
- 27.1.6 Market MTH's goods and services.
- 27.2 The Hirer may request access to or correction of the personal information that MTH holds by contacting MTH.
- 28. Notices**
- 28.1 Without limiting any other means of service, any notice given to the Hirer under these Terms may be given by email (effective upon transmission) or post (effective 2 Business Days after sending) to the addresses specified on the Hire Form or Credit Account Application.
- 29. General**
- 29.1 MTH shall not be liable for any delays or failure to comply with its obligations under these Terms which are caused by any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, epidemic, pandemic, or other event beyond MTH's reasonable control.
- 29.2 MTH does not waive a right, power or remedy if it fails to exercise or delay in exercising the right, power or remedy.
- 29.3 MTH's rights, powers and remedies provided in these Terms are cumulative and not exclusive of any rights powers or remedies provided by law.
- 29.4 If any of these Terms is deemed or determined to be invalid, the remaining Terms will not be affected.
- 30. Governing Law**
- 30.1 These Terms and all Hire Contracts are governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 31. Privacy**
- 31.1 All emails, documents, images or other recorded information held or used by MTH is "Personal Information" as defined and referred to in clause 31.2 and therefore considered confidential. MTH acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act"). MTH acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Hirer's Personal Information held by MTH that may result in serious harm to the Hirer, MTH will notify the Hirer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Hirer by written consent, unless subject to an operation of law.
- 31.2 Notwithstanding clause 31.1, privacy limitations will extend to MTH in respect of Cookies where the Hirer utilises MTH's website to make enquiries. MTH 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 Hirer's:
- 31.2.1 IP address, browser, email client type and other similar details;
- 31.2.2 tracking website usage and traffic; and
- 31.2.3 reports are available to MTH when MTH sends an email to the Hirer, so MTH may collect and review that information (collectively "Personal Information")
- If the Hirer consents to MTH's use of Cookies on MTH's website and later wishes to withdraw that consent, the Hirer may manage and control MTH's privacy controls via the Hirer's web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 31.3 The Hirer authorises MTH or MTH's agent to:
- 31.3.1 access, collect, retain and use any information about the Hirer;
- (a) including, name, address, date of birth, 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 Hirer's creditworthiness; or
- (b) for the purpose of marketing Equipment and Services to the Hirer.
- 31.3.2 disclose information about the Hirer, whether collected by MTH from the Hirer directly or obtained by MTH 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 Hirer.
- 31.4 Where the Hirer is an individual the authorities under clause 31.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 31.5 The Hirer shall have the right to request (by email) from MTH a copy of the Personal Information about the Hirer retained by MTH and the right to request MTH to correct any incorrect Personal Information.
- 31.6 MTH will destroy Personal Information upon the Hirer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of these Terms or is required to be maintained and/or stored in accordance with the law.
- 31.7 The Hirer can make a privacy complaint by contacting MTH via email. MTH 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 Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Privacy Commissioner at: <http://www.privacy.org.nz>