

1. GENERAL

- 1.1 In these Terms:
- 1.1.1 **Equipment** means any vehicle, equipment or other goods, together with accessories and any other equipment attached to, or used in connection with, it and includes any replacement vehicle, equipment or goods supplied by the Owner.
 - 1.1.2 **Hirer** means any person, firm or corporation to whom or to which any Equipment is rented by the Owner and includes the Hirer's successors, executors or administrators;
 - 1.1.3 **Include, includes and including** are to be read as though the words "but is/are not limited to" or "without limitation" (as applicable) immediately follow.
 - 1.1.4 **Owner** means Terra Industrial New Zealand Limited (Terra Cat), each of its subsidiaries and related entities (together with their respective successors and assigns), and any finance company with an interest in the Equipment; and
 - 1.1.5 **Rental Agreement** means the rental agreement for the Equipment, signed by the Hirer or its authorised representative, and incorporating these Terms of Rental.
- 1.2 The Owner may alter or replace these Terms of Rental at any time by notifying such amendment to the Hirer or publishing such amendment on its website. Any amendments will be binding on the Hirer (and the Hirer accepts and agrees to be bound by such amendments) in the event that the Hirer enters into a new Rental Agreement and/or requests Equipment for rental after the date the amendment was notified to the Hirer or published on the Owner's website (or on such other date as may be specified by the Owner). For the purposes of section 15 of the Contract and Commercial Law Act 2017, no agreement of any third-party beneficiary of these terms will be required to any amendment.

2. RENTAL OF EQUIPMENT

- 2.1 The period of rental shall commence from the time the Equipment is delivered to the Hirer or made available for the Hirer's collection and will continue until the Equipment is returned in accordance with clause 8.2. For avoidance of doubt, the period of rental includes any period extending beyond the end of the initial period of rental until such time that; a new end date is agreed, a new Rental Agreement is entered or the Equipment is returned to the Owner.
- 2.2 The Hirer will pay:
- 2.2.1 The ordinary rental charge for the total period of rental (as defined in clause 2.1) at the applicable rate specified in the Rental Agreement or otherwise notified by the Owner;
 - 2.2.2 If the Equipment is used for more than the standard hours specified in the Rental Agreement (or as otherwise agreed by the Owner in writing), as determined by the Equipment's hour meter, the excess hourly charge for each extra hour or part hour of use at the applicable rate specified in the Rental Agreement; and
 - 2.2.3 All transport costs relating to the delivery and repossession or return of the Equipment, fuel costs, cleaning costs, all fines and penalties relating to traffic offences involving the Equipment during the period of rental, the cost of repair or replacement of any lost or damaged Equipment (less any insurance proceeds received by the Owner) and, where applicable, an insurance premium charge.
- 2.3 The Hirer will pay GST in addition to all payments due under this agreement.
- 2.4 The ordinary rental charge and any other charges, plus GST, will be payable, for a Hirer with a trading account with the Owner, on the 20th of the month following the month of invoice, unless otherwise agreed in writing by the Owner. Where the Hirer has a cash account, the charges for each period of rental are payable in advance. The Hirer is not entitled to any refund or reduced charge for returning the Equipment prior to the end of the agreed hire period unless agreed by the Owner in writing. The Owner reserves the right to charge an early return fee.
- 2.5 All payments will be made by the Hirer in full, free of any deductions and set-off (and despite any unavailability of the Equipment for any period, whether due to mechanical defect, breakdown, accident, damage or otherwise). The Owner shall have a full right of set-off between amounts owed by the Hirer under the Rental Agreement and any amounts owing to the Hirer by any person falling within the definition of "Owner", howsoever arising.
- 2.6 If any payment due to the Owner is not made on due date then, without prejudice to any other rights or remedies available to the Owner, the Hirer will pay interest, at the rate of five percent above the Owner's prevailing overdraft interest rate, on all overdue amounts calculated on a daily basis from the date on which payment was due until payment is made in full (including before and after judgment).

3. PROPERTY RIGHTS

- 3.1 All Equipment remains the absolute property of the Owner at all times and the Rental Agreement does not confer on the Hirer any proprietary right or interest in or to any Equipment.
- 3.2 The rental of Equipment to the Hirer may create a security interest in the Equipment in terms of the Personal Property Securities Act 1999 ("PPSA"). Where required, the Hirer will promptly sign any further documents, provide any further information and do such other things as the Owner may request in order to ensure that the Owner has a perfected security interest in the Equipment (and its proceeds) with priority over all other relevant security interests.
- 3.3 To the maximum extent permitted by law, the Hirer:
- 3.3.1 waives its right to receive a verification statement relating to any security interest over the Equipment and waives its rights and, with the Owner's agreement, contracts out of the Hirer's rights under sections 107(2)(c) to (e) and (g) to (i) of the PPSA; and
 - 3.3.2 agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with the Owner's agreement, contracts out of those sections.
- 3.4 The Hirer must give the Owner at least 14 days prior written notice of any proposed change to the Hirer's name and/or other details (including changes in address or trading name).

4. COVENANTS BY HIRER

- 4.1 The Hirer shall throughout the period of rental:
- 4.1.1 UNDER NO CIRCUMSTANCES interfere with the service meter or otherwise alter or modify the Equipment;
 - 4.1.2 Keep the Equipment in its possession and under its control;
 - 4.1.3 Keep the Equipment in a safe and secure location and in an environment which is appropriate for the nature of the Equipment;
 - 4.1.4 Ensure that the Equipment is operated only by properly qualified and licensed personnel and in a careful and prudent manner;
 - 4.1.5 Notify the Owner immediately if the Equipment is stolen, damaged or involved in an accident and, if requested, return the Equipment to the Owner;
 - 4.1.6 If the Equipment is damaged, immediately cease use of the Equipment if such use could result in further damage to the Equipment;
 - 4.1.7 Permit the Owner to inspect, maintain and repair the Equipment at any time, provided that the Owner has given reasonable notice;
 - 4.1.8 Ensure that the Equipment is used solely for the purpose and in the manner for which it was designed and in accordance with its capabilities and limitations, any operating or other instructions or manual provided by the Owner (or the supplier or manufacturer) and in a manner that does not prejudice any applicable manufacturer or supplier warranty or any insurance cover;
 - 4.1.9 Comply with all relevant laws, rules, regulations or by-laws relating to the Equipment and its use;
 - 4.1.10 Preserve all marks of identification or ownership of the Equipment;
 - 4.1.11 Be responsible for, and indemnify the Owner against, any loss or damage to the Equipment which cannot be attributed to fair wear and tear;
 - 4.1.12 Allow the Owner and any representative of the Owner to enter any premises where the Equipment is kept (using reasonable force if necessary) in order to repossess the Equipment;

- 4.1.13 Comply with any special conditions in the Rental Agreement or otherwise specified by the Owner in writing.
- 4.2 The Hirer shall not:
- 4.2.1 Sell, assign, sublet, pledge, charge or part with possession of the Equipment or any part of it;
- 4.2.2 Allow the Equipment to be used, stored or otherwise located at any time outside an area of 50km from the primary location of use (as specified by the Hirer or as stated in the Rental Agreement for the Equipment) without the Owner's prior written consent;
- 4.2.3 Allow the Equipment to be used on the road unless:
- (a) The Equipment has a current registration and warrant of fitness / certificate of fitness;
- (b) The Hirer has paid to the Owner any additional charge set by the Owner; and
- (c) The Equipment is operated by a person authorised by the Hirer and who holds the necessary driver's licence;
- 4.2.4 Allow the Equipment to be used for the carriage of passengers for hire or reward without the Owner's prior written consent.
- 5. INSURANCE**
- 5.1 Throughout the period of rental, unless otherwise specified in the Rental Agreement, the Hirer shall insure the Equipment against fire, accident, theft, consequential loss or costs including third party liability, and such other risks as the Owner shall require and for the full market value of the Equipment, as may be specified by the Owner.
- 5.2 If requested by the Owner, the Hirer shall provide to the Owner, before the period of rental commences, evidence of appropriate insurance cover.
- 5.3 Unless specified otherwise in the Rental Agreement, where the Hirer is unable to provide proof of satisfactory insurance cover at the time of hire or where the Rental Agreement is on a cash account, the Owner's insurance will apply to the Equipment and the Hirer shall pay to the Owner an insurance premium charge at the Owner's published rate.
- 5.4 The Hirer shall be responsible for the applicable excess payment on any insurance claim. Where the Owner's insurance applies, the excess payment is \$5,000 unless otherwise expressly stated in the Rental Agreement.
- 6. MAINTENANCE and DAMAGE**
- 6.1 The Hirer shall, at its expense, keep the tyre pressures, track adjustment (where applicable) and levels of all fluids at proper operating levels. Such fluids include, but are not limited to; engine oil, transmission oil, hydraulic oil and coolant.
- 6.2 The Hirer shall be responsible, at its expense, for the supply of all fuel, fluids, grease and, where applicable, Diesel Exhaust Fluid, necessary to properly operate the Equipment.
- 6.3 The Owner shall provide maintenance and service checks during normal working hours (7.00am to 5.00pm Monday to Friday) at such times as the Owner reasonably determines. Where the Hirer specifies that maintenance or service calls are to be made outside normal working hours, the Hirer shall be liable to pay to the Owner any additional charges which apply, including for overtime labour.
- 6.4 All repair and maintenance work will be performed by the Owner or its designated repairer and the Hirer will not permit any other person to perform such work on the Equipment without the Owner's prior written consent.
- 6.5 The Hirer shall inform the Owner promptly when any repair becomes necessary, maintenance checks become due or anything occurs to the Equipment which poses a safety risk to people or property. This obligation may be waived in relation to maintenance checks where the Equipment is fitted with remote monitoring technology which sends information to the Owner. Any such waiver will be confirmed by the Owner in writing.
- 6.6 The Hirer shall be liable to pay the Owner for any costs incurred in the maintenance or repair of the Equipment where:
- 6.6.1 Such maintenance or repair is required directly or indirectly as a result of the Hirer's failure to observe the terms of the Rental Agreement; or
- 6.6.2 The maintenance or repair becomes necessary to return the Equipment to good and serviceable order and condition (with the exception of fair wear and tear).
- 6.7 Where the Equipment ceases to operate for longer than one (1) day (being a period of 24 hours from cessation) and cannot be quickly repaired on site (as determined by the Owner in its sole discretion):
- 6.7.1 the Owner will be under no obligation to provide replacement Equipment unless agreed as a special term of the Rental Agreement. Where replacement Equipment is provided, it will be without prejudice to any of the Owner's rights under the Rental Agreement and the replacement Equipment will continue to be rented by the Hirer from the Owner on the terms and conditions of the Rental Agreement.
- 6.7.2 where the operational failure is:
- (a) due directly or indirectly to the Hirer's use, misuse or carelessness (or other breach of the Rental Agreement), the Hirer shall:
- i. be liable to pay to the Owner all costs associated with removing the Equipment and delivering any replacement Equipment, including, without limitation, all transportation costs; and
- ii. not be entitled to any rebate of rental charges for the period when the Equipment is not available; and
- (b) not due directly or indirectly to the Hirer's use, misuse or carelessness (or other breach of the Rental Agreement), the Owner shall rebate to the Hirer the rental charges paid by the Hirer for the period beyond one (1) day for which the Equipment is not available.
- 7 INDEMNITY**
- 7.1 The Owner shall not in any circumstances be liable for, and the Hirer indemnifies and will keep indemnified the Owner from, any loss, liability, damage, cost, claim or expense arising from:
- 7.1.1 The Hirer's possession, operation or use of the Equipment;
- 7.1.2 The exercise or attempted exercise by the Owner of its rights under clause 4.1.12; or
- 7.1.3 The occurrence of any event entitling the Owner to terminate the Rental Agreement.
- 8 TERMINATION**
- 8.1 The Owner shall be entitled to terminate the Rental Agreement (without any liability to the Hirer whatsoever) if:
- 8.1.1 The Hirer defaults in the payment of any amount due (time being of the essence) or breaches any of the terms and conditions of this Rental Agreement or any other Rental Agreement with the Owner;
- 8.1.2 The Hirer becomes bankrupt, insolvent, goes into liquidation, has a receiver, a manager, a receiver and manager, an administrator or statutory manager appointed over any of its assets, ceases (or threatens to cease) to carry on business or is unable to pay its debts as they fall due;
- 8.1.3 The Hirer does or causes or omits to be done or permits any act or thing which, in the opinion of the Owner, prejudices or places in jeopardy the Equipment or the Owner's rights in the Equipment or under this agreement or the Owner considers the Equipment is "at risk" within the meaning of section 109 of the PPSA; or
- 8.1.4 The Equipment is inoperable for more than one (1) day (as defined in clause 6.7) and a replacement unit, where such is a term of the Rental Agreement, is unavailable, or the Equipment is stolen or destroyed or damaged to such an extent as to render it a total loss (in each case as determined by the Owner).
- 8.2 Upon termination of this Rental Agreement at the expiry of the period of rental, or earlier pursuant to clause 8.1, the Hirer shall deliver the Equipment to the Owner clean and in good order, repair and condition (fair wear and tear excepted) and shall be liable to pay to the Owner:
- 8.2.1 All rental and other moneys (including interest) due to the Owner which may be due and unpaid at the date of termination;
- 8.2.2 The balance of all rentals which would otherwise have been payable from the date of termination to the expiry of the period of rental, discounted for early payment in such amount as the Owner in its discretion allows; and
- 8.2.3 All costs and expenses incurred by the Owner in relation to the enforcement of its rights or powers contained in this Rental Agreement (including legal costs as between solicitor and client).

- 8.3 A post-rental inspection report, issued by the Owner as to the condition of the Equipment, shall be conclusive evidence of the facts it records except in the case of manifest error. The Hirer shall pay to the Owner upon demand:
- 8.3.1 all costs required to remedy any damage recorded in the Owner's post-rental inspection report, with the exception of damage attributable solely to fair wear and tear; and
- 8.3.2 a rental charge, at 75% of the applicable ordinary rental rate, for the loss of revenue suffered by the Owner as a result of the unavailability of the Equipment for rental due to loss of or damage to the Equipment during the period of rental. This charge will apply from the date of expiry or termination of this Rental Agreement until the Equipment is repaired or replaced, but subject to a maximum of 120 calendar days.

9 EXCLUSION OF LIABILITY

- 9.1 To the maximum extent permitted by law:
- 9.1.1 all warranties, guarantees, conditions, and representations in respect of the Equipment (whether express, implied, or statutory) are excluded, including as to quality, fitness or suitability for any particular purpose or otherwise (except to the extent of any written warranty given by the Owner to the Hirer);
- 9.1.2 the Owner and Hirer contract out of the Consumer Guarantees Act 1993 where the Hirer is in trade;
- 9.1.3 the Owner and Hirer contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 Act for the purposes of this Rental Agreement and the matters covered by this Rental Agreement pursuant to section 5D of that Act, where the Hirer is in trade; and
- 9.1.4 the Owner and Hirer contract out of the following sections of the Contract and Commercial Law Act 2017:
- (a) sections 35 to 49 (inclusive) and agree that the Hirer has no right to terminate or cancel this Rental Agreement, or claim damages, as a result of any matter, information or circumstance including for misrepresentation, repudiation, anticipatory breach or breach of or in respect of any matter giving rise to or the subject of a claim arising out of or in connection with this Rental Agreement (whether arising in tort (including negligence), in contract, statute, by operation of law or otherwise); and
- (b) sections 60 to 66 (inclusive) (pursuant to section 67) and agree that where this Rental Agreement is frustrated, the rights and obligations of the Owner and Hirer shall be governed by the terms of this Rental Agreement.

For the avoidance of doubt, where any written warranty provided by the Owner conflicts with the remainder of this clause 9, the provisions of this clause 9 shall prevail.

- 9.2 Without limiting clauses 9.3 and 9.4, to the maximum extent allowed by law, the Owner's liability (if any) shall be limited to:
- 9.2.1 at the Owner's option, repair of defective Equipment, re-supplying replacement Equipment or, without limiting clause 8.1.4, at the Owner's option, paying the proper and reasonable costs of having the Equipment repaired or replaced; and
- 9.2.2 any rebate payable under clause 6.7.2(b).
- 9.3 Without limiting clause 9.4, regardless of the legal basis of any claim made against the Owner (including under any warranty (expressed, implied or statutory), tort (including negligence), equity or any other legal principle or theory, or otherwise), the Owner's maximum liability under any circumstances shall, to the maximum extent allowed by law, not exceed the lesser of the ordinary rental paid by the Hirer to the Owner in respect of the Equipment, or 3 months' ordinary rental charges for that Equipment.
- 9.4 The Owner shall not be liable whether in contract (including under any warranty (expressed, implied or statutory)), tort (including negligence), equity or under any other legal principle, theory or basis or otherwise:
- 9.4.1 Where the Hirer has altered or modified the Equipment, misapplied the Equipment, or has subjected the Equipment to any unusual or non-recommended use, servicing or handling;
- 9.4.2 For loss caused by any factors beyond the Owner's control;
- 9.4.3 For loss of revenue, loss of actual or anticipated profits, loss of production, loss of use, loss of contract, loss of business, loss of opportunity, any business interruption, loss of reputation, or any liability incurred by the Hirer, whether arising directly or indirectly, or for any indirect or consequential loss of any kind;
- 9.4.4 Where the Hirer has not complied with: the terms of any written warranty; any manufacturer's recommendations, instructions, or handbook provided to the Hirer; or any specific instructions provided by the Owner, including as to maintenance, use or security of the Equipment.
- 9.5 None of the Owner's officers, employees, agents or independent contractors shall in any circumstances be under any liability of any kind to the Hirer in connection with this Rental Agreement. Every exemption, limitation, condition and right expressed or implied in this Rental Agreement on the Owner's part or in favour of the Owner (including clauses 6.7, 7 and 9) shall extend to protect all of the Owner's officers, employees, agents and independent contractors (and, to avoid doubt, are intended to confer a benefit on, and be enforceable by, the Owner's officers, employees, agents, and independent contractors in accordance with Subpart 1 (Contractual Privity) of Part 2 of the Contract and Commercial Law Act 2017).

10 WAIVER AND VARIATION

All of the provisions of this Rental Agreement and all rights or remedies which the Owner may have under them at law or in equity or otherwise will not be waived or varied unless the waiver or variation is in writing signed by an authorised person on the Owner's behalf. No waiver by the Owner of a breach by the Hirer shall be deemed to be a waiver of any other breach or any future breach.

11 PRIVACY ACT 1993

- 11.1 The Hirer authorises the Owner to collect from any source, and hold, personal information concerning the Hirer for the purpose of:
- 11.1.1 Enabling the Owner to do business with and communicate with the Hirer;
- 11.1.2 Determining the credit-worthiness of the Hirer;
- 11.1.3 Communicating products, services and promotional activities of the Owner; and/or
- 11.1.4 Debt collection.
- 11.2 The Hirer authorises the Owner to disclose personal information held by it to any other person for the purposes set out in clause 11.1 or for the purposes of exercising the Owner's rights under this Rental Agreement.
- 11.3 The Hirer understands that it has the right to access, and request correction of, personal information held by the Owner.
- 11.4 The Hirer consents to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from the Owner from time to time.

12 SEVERABILITY

If any part of this Rental Agreement is found by any court to be invalid, void, illegal or unenforceable, the validity, existence, legality or enforceability of the remainder of the Agreement shall not be affected, prejudiced or impaired.

13 APPLICABLE LAW

This Rental Agreement and the relationship between the Owner and the Hirer shall be governed by the laws of New Zealand.