

TERMS AND CONDITIONS OF DS Trees Ltd ("Owner")

CONDITIONS

The Conditions of Hire set out below shall apply to all contracts for the hire of goods ("equipment") between the Owner and the person hiring the equipment ("Hirer") and shall not be deemed or construed to be modified, amended, waived, in whole or in part, except by written agreement by the parties hereto.

2.0 CHARGES

2.1 Equipment may be hired for: (i) the minimum period; or (ii) daily; or (iii) weekly. Subject to termination pursuant to clause 5 the hire periods are as defined in Clause 2.2 ("hire period") Provided that the Hirer acknowledges and agrees that the Owner may charge extra on an hourly or daily basis for any equipment usage in excess of the maximum usage time.

2.2 Hire periods with maximum usage time in brackets are:
"Minimum period" means 4 hours (maximum usage 4 hours)
"Daily" means 24 hours (maximum usage 8 hours)
"Weekly" means seven days (maximum usage 56 hours)

2.3 The hire period begins from the commencement time and ends on the earlier of the return time or the termination of the agreement pursuant to Clause 5.

2.4 The Hirer shall pay as invoiced for the hire period, materials used, loss and damage waiver charges (if applicable), delivery/removal costs, excess use charges, damage to or loss of the equipment, cleaning costs (if any), default interest for late payment: all charges plus GST unless otherwise indicated.

3.0 PAYMENT AND DEFAULT INTEREST

3.1 The Hirer will pay a bond of not less than the estimated total charge.

3.2 On return of the equipment, the actual total charges will be calculated and the Hirer will either pay or be refunded the difference between the bond and the actual total charge.

3.3 Any agreed discount for charge account customers is claimable only if the account is paid by the 20th of the month following date of invoice.

3.4 Without prejudice to the Owners other remedies hereunder or at law or otherwise the Hirer will pay default interest at the Owner's current account overdraft interest rate (as certified by the Owner's Banker) plus 2% on a day to day basis on all outstanding amounts from the end of the agreed hire period (for cash customers) or from the 20th of the month following the date of invoice (for charge account customers) until all moneys have been paid in full.

3.5 No credit shall be extended on overdue accounts.

3.6 For the purposes of this contract return of the equipment shall be on a "working day" which is defined as being between the business hours of 0730 am and 1700 pm of each and every day excluding any Public Holidays. If equipment is returned outside the business hours of a working day, then the hire period shall terminate at the commencement of the next succeeding working day.

4. DELIVERY AND REMOVAL

4.1 Delivery and removal charges are extra.

4.2 The Hirer hereby authorises the Owner to bring the Owner's vehicle onto the place where the equipment is to be used and to deliver and remove the equipment. The Hirer indemnifies the Owner against any cost, claim, damage, expense incurred or action commenced against the Owner directly or indirectly arising from the Owner delivering or removing the equipment.

4.3 Requests for removal must be made by telephone at completion of hire.

5.0 OWNERS RIGHT TO CANCEL

5.1 If the Owner believes the equipment is at risk or that the Hirer is unable or might be unable to pay any hire charge the Owner may take whatever action the Owner considers necessary to

retake possession of the equipment. Accordingly, the Hirer grants the Owner an irrevocable right and authority to enter any time onto any place where the equipment is situated or thought to be situated and to remove the equipment.

5.2 The Hirer shall indemnify and continue to indemnify the Owner in respect of any claim, action, damage, expense, or cost (including full solicitor/client costs) incurred or threatened as a result of the Owner exercising the powers of this clause or otherwise acting to recover any equipment hired or moneys payable by the Hirer pursuant to this contract.

6. NO ASSIGNMENT

6.1 This contract is personal to the Hirer and is not capable of assignment whether in whole or in part by the Hirer

7. HIRER'S OBLIGATIONS

7.1 The Hirer shall:

7.1.1 take proper and reasonable care of the equipment and return it by the return time stated on the face of this form in good order and condition; and

7.1.2 carry out all necessary servicing (including by way of example the supply of all necessary oils, grease and fuel) at the Hirer's OWN EXPENSE; and

7.1.3 satisfy themselves that the equipment is suitable for their intended use; and

7.1.4 use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment; and

7.1.5 Immediately notify the Owner by telephone if the equipment breaks down; and

7.1.6 reimburse the Owner for any damage to or loss of or forfeiture of the equipment howsoever arising including (by way of example and not limitation) any loss or damage caused by overloading of electric tools and motors, incorrect electric current, lack of lubrication, blow outs and cuts to tyres, disappearance or theft of equipment, fire, damage in transit, negligence, misuse; and

7.1.7 except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring any claim against the Owner for loss or damage incurred or threatened against the Hirer of arising directly or indirectly from the Hirer's use of the equipment; and

7.1.8 Indemnify the Owner against any claim made by any person against the Owner for any damage, expense, claim, demand, action or loss arising directly or indirectly out of the Hirer's use or possession of the equipment in contravention of the terms of this contract.

7.1.9 Indemnify the Owner in respect of all claims for compensation for damage in consequence of:

7.1.9(a) any accident or occurrence arising out of the use of the equipment by the Hirer or its agents, servants or subcontractors.

7.1.9(b) any act or omission of the Hirer or its agents, servants or subcontractors.

7.1.9(c) any accident involving any member of the public arising out of or in consequence of the hire.

7.2 For the avoidance of doubt in terms of the Health Safety and Employment Act 1992 the Hirer shall not be deemed to be either an employer or a contractor nor a person who controls a place of work.

7.3 The Hirer warrants that all persons who use the equipment shall be competent and qualified to use the equipment and shall use the equipment in the manner it was designed to be used. If the Hirer is not an individual, the person who signs this contract on behalf of the Hirer warrants that he/she has authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations of the Hirer.

8. LOSS AND DAMAGE WAIVER

8.1 If the Hirer has paid the loss and damage waiver charge, the Owner will waive the Hirer liability (in terms of Clause 7.1.6) for accidental damage (provided that the Hirer has at all times acted reasonably) or theft of any equipment from secure premises

provided that in the case of theft the Hirer shall immediately notify the Police (taking the name of the Police contact) and the Owner.

8.2 Special conditions or exclusions may apply depending on the nature or location of the Hirer use of the equipment and these should be notified to the Owner prior to the equipment leaving the Owner's premises. For the avoidance of doubt the Hirer acknowledges that mysterious disappearance. Loss or damage resulting from negligent acts or omissions of the Hirer, earthquake and war damage, punctures and damage to tyres ARE NOT COVERED by the loss or damage waiver.

9. LIMITATION OF LIABILITY

9.1 where the Owner is in breach of a suppliers guarantee in terms of the Consumer Guarantees Act 1993, the Hirer in entering into this contract, acknowledges that in all other circumstances whatsoever the Owner shall not be liable for direct or consequential damage, loss or expense whatsoever and howsoever arising, (whether in contract or in tort [including that resulting from the negligence of the Owner] or arising by operation of law) and whether suffered by the Hirer and/or any third party for any amount that exceeds the amount actually paid by the Hirer to the Owner pursuant to this contract.

10. GENERAL

10.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons includes incorporated and unincorporated entities. Words importing one gender include the other. A reference to a clause or sub-clause is a reference to a clause or sub-clause hereof. A reference to Owner includes its servants and agents.

10.2 If at any time any provision of this contract is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby to the intent that this contract should be construed as if the provision or part thereof in question has been deleted

11.0 CONSUMER GUARANTEES ACT 1993

11.1 The provisions of the Consumer Guarantees Act 1993 shall not apply to this contract where the Hirer acquires equipment for the purposes of a business or where the Hirer acquires equipment of a kind not ordinarily acquired for personal, domestic or household use.

12.0 PRIVACY ACT 1993

12.1 This contract collects personal information about you. The information is principally collected to evaluate the hire of goods that you seek. The information is collected and held by the Owner. The failure to provide the information on the front of this contract may result in your application to hire goods being declined or this contract subsequently being terminated by the Owner. The Hirer has rights of access to and correction of personal information contained in this contract, subject to the provisions of the Privacy Act 1993. The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services. The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire agreements entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding this hire contract if the Hirer does not comply with its obligations.