

APS EQUIPMENT - Terms and Conditions of Hire

1. Definitions -

- 1.1. "Equipment" shall be as set out in any agreement for hire between the Owner and the Hirer and shall include any replacement equipment supplied to the Hirer.
- 1.2. "Hire Contract" means these Terms and Conditions of Hire and shall include any other agreement or writing between the Owner and the Hirer relating to the hire of the Owner's Equipment.
- 1.3. "Hirer" means that person (or persons) entering into the Hire Contract and where that person (or persons) enters into the Hire Contract for or on behalf of another entity includes each entity. This expression also extends to those claiming under or authorised by the Hirer. "Hirer" shall be interchangeable with the term "Debtor" for the purposes of the Personal Property Securities Act 1999.
- 1.4. "Owner" shall mean APS Group NZ Ltd. "Owner" shall be interchangeable with the term "Secured Party" for the purposes of the Personal Property Securities Act 1999.

2. Period/Rates

- 2.1. Hourly Rates are measured by the service meter(s).
- 2.2. Daily Rates can be either:
 - a) Business day 10 hours; or
 - b) A 24 hour period.
- 2.3. Weekly rates are for 7 days.
- 2.4. Monthly rates are for a minimum 29 days.
- 2.5. Extra hours of hire in addition to the above rates will be charged additional pro rata at the agreed rate.
- 2.6. Where the hour meter or recording device is found not to be working either during or at the completion of the hire period then the Owner will estimate the hours used and the onus is on the Hirer to prove otherwise.
- 2.7. No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by the Owner. In the event of Equipment breakdown, provided the Hirer notifies the Owner immediately, hiring charges will not be payable from the time the Hirer receives notice of such breakdown and thereafter 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 Hirer.
- 2.8. The maximum period of any hire shall be one year less one day.

3. Payment

- 3.1. Payment must be made in full before the hire commences.
- 3.2. If the Hirer has a credit account that has been approved by the Owner, the hire can be invoiced and must be paid in full by the 20th of the month following date of invoice.
- 3.3. If credit accounts become overdue, a penalty of 2.0% per month will be payable in addition to the original amount, and credit is stopped until the account has been paid in full.
- 3.4. The Hirer shall pay to the Owner all costs incurred in recovering any outstanding debt from the Hirer.
- 3.5. If any amount is not paid in full by the due date, the Hirer shall pay to the Owner interest on the amount outstanding at the rate of 2.0% per month from the due date until payment is made in full of the amount outstanding, including interest.
- 3.6. The Hirer accepts and agrees the Owner has right of recovery and in event of a liquidation where payments have been made in accordance with normal business practice and as set out herein, such payment shall not be regarded as preferential.

4. Hirers Responsibilities

- 4.1. Breakdowns - The Hirer must notify the Owner immediately of any breakdown, damage or accident. The Hirer is not absolved from his responsibility to safeguard the Equipment by giving such notification.
- 4.2. The Hirer is not to undertake any repairs or modifications to the Equipment without the Owners written permission.
- 4.3. The Hirer shall keep the Owner notified as to the whereabouts of the Equipment hired at all times.
- 4.4. The Hirer shall satisfy himself that the Equipment hired is suitable and sufficient for the work to be done and that he or she can operate it correctly and safely, is properly trained and will comply with all operating instructions and recommendations of the manufacturer.
- 4.5. Fuels, oils and other consumables are the responsibility of the Hirer.
- 4.6. The Hirer agrees to pay for all consumables supplied by the Owner.
- 4.7. Only consumables approved by the Owner are to be used during the hire.
- 4.8. The Hirer must check and maintain all fuel and oil levels daily before commencing work.
- 4.9. At all times the Hirer must keep the Equipment clean. On return of the Equipment any cleaning necessary will be chargeable to the Hirer.
- 4.10. If the Hirer is providing the operator, the Hirer takes responsibility for ensuring that only competent operators with relevant training and licenses use the Equipment.
- 4.11. The Hirer will use the Equipment properly and for the purpose for which it was designed acknowledging the Owner gives no warranty as to the Equipment's capacity, condition or state of repair, or suitability for the Hirer's purpose and the Hirer and shall use the Equipment entirely at his own risk.
- 4.12. The Hirer will not sell, offer for sale, mortgage, sublet or assign its interest under the Hire Contract or in the Equipment hired or any part thereof.
- 4.13. If the Owner has agreed that the Hirer can on-hire the Equipment, the Hirer shall take all steps required to protect the Owner's interest in the Equipment, including, where necessary, registering a financing statement over the Equipment.

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

- 5.1. Where the Hire Contract creates a security interest in the Equipment for the purposes of the PPSA the Hirer acknowledges and agrees that the Hirer grants a security interest in the Equipment to the Owner.
- 5.2. The Hirer undertakes to:
 - 5.2.1. 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 Owner may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - 5.2.2. Indemnify, and upon demand reimburse the Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any goods charged thereby;
 - 5.2.3. Take all necessary steps to act in the best interests of the Owner and to protect the Owner's security interest in the Equipment.
- 5.3. The Owner and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 5.4. The Hirer waives his/her or its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 5.5. The Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

6. Liability

- 6.1. The Hirer takes full responsibility for all damage to and/or loss of hired Equipment while it is away from the Owner's premises.
- 6.2. The Hirer undertakes to keep the Equipment in his possession and control while it is away from the Owners premises.
- 6.3. The Hirer is responsible for arranging, and for meeting any costs of, the return of the Equipment to the Owner's premises.

7. Insurance

- 7.1. The Hirer may elect or the Owner may require the payment of a waiver damage (insurance) surcharge. On receipt of this payment the Owner will indemnify the Hirer against liability for any loss or damage to the Owner's Equipment while on hire.
- 7.2. The Insurance does not cover:
 - 7.2.1. The first \$1000 of any claim. An additional underage excess shall apply to any driver or person in charge of the Equipment, who is under the age of 25.
 - 7.2.2. Misuse, abuse or overloading of any part of the Equipment hired.
 - 7.2.3. Mysterious disappearance or wrongful conversion, including where Equipment is not reasonably locked and secured.
 - 7.2.4. Violation of any law or regulation.
 - 7.2.5. Loss or damage whilst the Hirer or person in charge or control of the Hired Property is under the influence of alcohol or any drug.
 - 7.2.6. Damage to tyres and tubes.
 - 7.2.7. Negligence of the Hirer where the Hirer has failed by intent or lack of due care to take all responsible precautions to protect the Equipment from loss or damage.
- 7.3. The Hirer shall advise the Owner immediately if the Equipment is lost or damaged.
- 7.4. The Hirer shall not arrange or undertake any repairs or salvage without the authority of the Owner, unless such repairs or salvage are needed to prevent further damage.

8. Terms and Conditions

- 8.1. All hire charges are based on current costs and are subject to change without notice.
- 8.2. Unless agreed in writing before the hire commences the acceptance and use of the Equipment on hire from the Owner shall in itself constitute full acceptance of these terms and conditions and of all charges stated on the Hire Contract.
- 8.3. The Owner reserves the right to inspect the hired Equipment at any time and to terminate the hire forthwith if the Equipment is not being used and maintained correctly.
- 8.4. The Owner takes no liability whatsoever in respect of third party of similar risks or for personal injury or consequential damage of any kind or however arising resulting from the use or failure of the Owner's Equipment.
- 8.5. The Hirer indemnifies the Owner against any claim of any kind from third parties.
- 8.6. In the event of the Hirer defaulting or failing to comply with any of the terms of the Hire Contract then the Owner reserves the right to terminate the hire period forthwith and take any steps necessary to recover the Equipment, including the right to enter upon any premises where the Owner reasonably believes the equipment may be to recover the same. The Owner shall have the right to recover all amounts due for the hire, reconditioning of Equipment if required and all costs of recovery and transport of the Equipment to the Owners premises. The Hirer indemnifies the Owner against all actions, claims, costs or damages resulting from or arising out of the exercise of the Owners' rights under this clause.
- 8.7. The Hirer is responsible to familiarise himself and ensure compliance with all laws & regulations applicable to the Hired Equipment including compliance with the Health and Safety in Employment Act 1992.
- 8.8. Each of the foregoing conditions shall be without prejudice to each other.
- 8.9. Title to the Equipment will at all times remain with the Owner.
- 8.10. The Hirer indemnifies the Owner for all and any loss and/or damage suffered by the Owner as a result of any breach by the Hirer of any provision of the Hire Contract and/or as a result of the Hirer failing to take adequate steps to protect the Owner's interest in the Equipment.

9. Owners Right to Terminate

9.1. Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified or otherwise agreed to with the Hirer, the Owner may terminate the Hire Contract, without payment of compensation to the Hirer:

9.1.1. Immediately and without notice to the Hirer if the Owner considers the Equipment is, or may be, at risk of loss and/or damage for any reason; or

9.1.2. In any other case, by giving the Hirer two (2) hours' notice of the intention to terminate the Hire Contract. Such notice need not be in writing and shall be deemed sufficiently given if made orally to the Hirer or the operator for the time being of the Equipment. If the Owner cannot reasonably contact the Hirer or the operator, notice may be given as soon as is reasonably practical after the Equipment is taken by the Owner.

10. Privacy Act

10.1. The Hirer authorises the Owner to collect, retain and use any information about the Hirer for the purpose of assessing the Hirer's creditworthiness.

10.2. The Hirer authorises the Owner to disclose any information obtained to any person for the purposes set out in the foregoing clause.

11. General

11.1. The Owner may assign its rights and obligations under the Hire Contract to any other person without the consent of the Hirer.

11.2. No waiver by the Owner, in exercising any right hereunder shall operate as a waiver of any other right or of that same right at a future time, nor shall any delay in exercise of any power or right be interpreted as a waiver.