

GENERAL TERMS AND CONDITIONS OF HIRE

1. DEFINITIONS

In these terms and conditions:

- (a) "Agreement" means the Agreement to Hire, the Addendum to Hire (if any) and these Terms and Conditions of Hire.
- (b) "Equipment" means the Equipment hired by the Owner to the Hirer (whether the original equipment or any substitute) and includes all accessories and other equipment of the Owner attached to the equipment or to be used in connection with it. For the purposes of this Agreement the equipment shall be deemed to be the property of the Owner whether such is the fact or not.
- (c) "Hirer" means you and includes your successors or personal representatives.
- (d) "Owner" means Accessman Group of Companies and includes its successors and assigns.
- (e) "Site" means the place or area where the Equipment is to be operated for the purposes of this Agreement (if appropriate).

2. HIRE

The Owner shall let, and the Hirer shall take on hire, the equipment specified in the Agreement to Hire from the Commencement Date specified in the Agreement until the Return Date specified in the Agreement (the "period of hire").

3. CARE OF MACHINERY/EQUIPMENT

The Hirer shall maintain the equipment in good working order during the period of hire and shall return the equipment clean after use.

4. WARRANTY AND ACCEPTANCE

- (a) The Hirer acknowledges that the Owner has entered into the Agreement on the basis of information supplied to the Owner by the Hirer and recorded overleaf and warrants that that information is accurate.
- (b) Acceptance by the Hirer of the Equipment shall be deemed to be acceptance of the terms of the Agreement, and these Terms and Conditions of Hire and the Addendum to Hire.

5. USE AND HANDLING OF EQUIPMENT

- (a) The Hirer shall not:
 - (i) require, permit or suffer the Equipment to be used for anything contrary to any Act, regulation, by-law, requirement, code of practice or recognised convention;
 - (ii) allow any other person other than those named in the Agreement to operate the Equipment without first obtaining the written consent of the Owner;
 - (iii) permit or suffer the operation or direction of the Equipment by any person who by reason of intake of drink or drugs has his or her faculties impaired.
- (b) The Hirer shall be responsible for all loss or damage whatsoever caused by the Equipment while in the possession of the Hirer, including the cost of repairs suffered or incurred by the Owner as a consequence of any breakdown or damage to the Equipment where such breakdown or damage is caused by any negligent act, omission, misdirection or misuse of the Equipment on the part of the Hirer or the Hirer's servants, agents, contractors or subcontractors and in particular shall be responsible for the payment of the hire at the rate specified in the Agreement during the period the Equipment is necessarily idle as a result of any such negligent Act or omission or misdirection or misuse of the Equipment.
- (c) The Equipment shall be at the sole risk of the Hirer throughout the period of hire.

6. NO EXTENSION

If the Hirer wishes to extend the period of hire a new Agreement to Hire must be entered into with the Owner.

7. DAMAGE TO SERVICES AND PROPERTY

The Hirer shall be solely responsible for all damage which may be caused to any property whatsoever caused by the Hirer or the Equipment during the period of hire.

8. RISK

The Hirer shall not do, permit or suffer to be done anything in connection with the Equipment or its use whereby any policy or policies of insurance effected in connection with the Equipment or its use may become void or voidable or whereby the premiums thereon may be increased.

9. RESPONSIBILITY FOR LOSS

Under no circumstances shall the Owner be liable for any direct, indirect or consequential loss or damage arising out of any breakdown or stoppage of the Equipment or otherwise arising out of or in connection with the hire of the Equipment to the Hirer.

10. STOPPAGES

The Owner shall not be responsible for any loss or damage arising out of any stoppage or delay occasioned by a cause beyond the Owner's control including but not limited to weather conditions, ground conditions, strikes and industrial disputes.

11. NOTICE OF ACCIDENT

If the Equipment is involved in any accident resulting in injury to any person or damage to any property, immediate notice must be given by the Hirer to the Owner by telephone and confirmed by letter or facsimile to the Owner's principal office.

12. SUBLETTING

The Hirer shall not sublet or otherwise part with possession of the Equipment or any part thereof to any Third Party without first obtaining the written consent of the Owner. The Hirer at the Hirer's own expense shall protect and defend the Owner from all claims, liens and legal processes of creditors of the Hirer and shall keep the Equipment and any part thereof free and clear of any such claims.

13. PAYMENT

Payment shall be due not later than the 20th of the month following the date of invoice. If payment is not made by that date, interest will accrue from the date of the invoice in any amount outstanding at the rate of 2.5% per month. Any amount becoming due and payable in terms of this paragraph shall be liquidated debt and the Owner shall be entitled at any time to commence proceedings against the Hirer for payment of the debt including legal and collection costs incurred by the Owner.

14. TERMINATION OF AGREEMENT

- (a) The Owner may immediately and without notice terminate the hire and retake possession of the Equipment if:
 - (i) the Hirer makes default in the observance or performance of any of the Terms and Conditions of Hire and the Agreement;
 - (ii) the Owner believes on reasonable grounds that the Hirer is about to breach the terms of the Agreement of these Terms and Conditions of Hire and that such breach might endanger any person or property; or
 - (iii) the Equipment for any reason is damaged so as to be inoperable or unsafe for use.
 - (iv) the Hirer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Hirer or if a receiver is appointed for all or any assets of the Hirer.
- (b) Any determination to terminate the hire and retake possession of the Equipment shall be without prejudice to the rights of the Owner in respect of any breach of this Agreement.

15. INDEMNITY

The Hirer shall indemnify and keep indemnified the Owner from and against all damage or loss:

- (a) suffered or incurred in consequence of:
 - (i) any breach of the terms of the Agreement of these Terms and Conditions of Hire by, or
 - (ii) any negligent Act or omission on the part of, or
- (b) otherwise caused by the Hirer or the Hirer's servants, agents, contractors or subcontractors during the term of this Agreement.

16. ORAL AGREEMENTS AND STIPULATIONS

No oral agreement, promise, collateral stipulations, representation, condition or warranty given or entered into by the Owner or by any agent or employee of the Owner and not in conformity with this Agreement shall be binding upon the Owner unless confirmed in writing by the Owner.

17. WAIVER

All the rights, powers and remedies of the Owner shall remain in full force notwithstanding any neglect, forbearance or delay by the Owner in the enforcement of them.

18. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Hirer shall observe and comply with the provisions of all Acts, regulations, by-laws and codes of practice in force during the period of hire in relation to the work on which the Equipment is to be employed and the manner of performance of that work and in relation to the Site and with all orders and directions lawfully given by any competent authority.

19. ARBITRATION

If during the continuance of the hire or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer in regard to the hire or to the construction of this Agreement or the rights or liabilities of the Owner or the Hirer, that dispute, difference or question shall be referred to a sole Arbitrator to be agreed upon by the Owner and the Hirer if they can agree upon one and otherwise to two Arbitrators (or to their Umpire in the case of disagreement) one to be appointed by each party and in either case in accordance with the provisions of the Arbitration Act 1908.

20. CONTRACTING OUT

The Agreement, the Terms and Conditions of Hire and the Addendum to Hire (if any) contain the whole of the terms of the contract between the parties and all other terms, conditions and warranties which might otherwise have been implied or have any application are hereby to the extent permitted by law expressly excluded.

21. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

Acceptance by the Owner of the Agreement, the hire of the Equipment pursuant to these Terms and Conditions of Hire and the Addendum to Hire (if any) shall comprise a Security Agreement as defined in the PPSA for the purposes of the PPSA. The Owner shall retain a Security Interest as defined in the PPSA in all Equipment. The Hirer and the Owner agree in terms of section 107 of the PPSA that sections 114(1)(a), 117(1)(c), 113 and 114 of the PPSA shall not apply to the enforcement by the Owner of its Security Interest. The Hirer waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA upon enforcement. The Hirer waives its right to receipt of a financing statement or financing change statement in the terms of section 148 of the PPSA.