



## Terms and Conditions

### 1. CONDITIONS

1. The Conditions set out below shall apply and are incorporated into any contract for the hire and/or sale of goods ("equipment") between The X-Site Group Ltd ("the Owner") and the person hiring or buying the equipment ("Hirer") ("Contract"). The owner reserves the right to change these Conditions without notice.

### 2. CHARGES

1. Equipment will be hired as agreed by the Owner and the Hirer. The relevant hire period is set out in the Contract. The hire period is as defined on the hire agreement, PROVIDED THAT the Hirer agrees that the Owner may charge extra on a pro rata basis for any equipment usage in excess of the maximum usage time as set out in that hire agreement, and subject always to the Owner's rights in clause 5. Certain equipment may carry minimum and/or maximum hiring periods. The Hirer shall not be entitled to a refund or reduced hire charge if the Hirer chooses to return the equipment to the Owner before the end of the agreed hire period.

2. The hire period begins from the time the equipment leaves the Owner's premises and runs until the equipment is returned to the Owner at the place of hire or the Contract is terminated pursuant to clause 5.

3. The Hirer shall pay as invoiced for the hire period for all materials used, insurance levy 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.

4. Returned equipment is expected to be clean. Cleaning fees will be assessed and charged if the Hirer returns equipment that the Owner deems to be excessively dirty.

### 3. PAYMENT AND DEFAULT INTEREST

1. All charges are exclusive GST unless otherwise indicated and the Hirer shall pay the charges plus GST where indicated.

2. For hire of equipment, unless the Hirer is a charge account customer:

a. The Hirer may be required to pay a deposit or in full, an amount of no more than the estimated total charge.

b. On return of the equipment in good order and condition, the actual total charges will be calculated and the Hirer will either pay or be refunded with the difference between the deposit and the actual total charge.

3. For purchase of equipment, the Hirer will pay the Owner the agreed price. Risk passes on collection of or delivery of the equipment.

4. Any agreed discount for charge account customers is claimable ONLY if the account is paid by the due date as determined by the Owner and specified on the invoice.

5. The Hirer must not make any claim for credit more than 07 days after the date of invoice.

6. If no details of invoices being paid accompany a payment, the Owner reserves the right to apply payments received against the oldest invoices outstanding from the Hirer. The Owner will not be obliged to reallocate such payments should details be subsequently provided.

7. Without prejudice to the Owner's other remedies under these conditions at law or otherwise, the Hirer will pay default interest at the rate of 5% per calendar month on all outstanding amounts from the end of the agreed hire period until all monies have been paid in full.

8. No credit shall be extended on overdue accounts.

9. The Hirer shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or an attempted exercise of any of its rights or remedies under the Contract, including commissions and legal costs on a solicitor and client basis.

10. The Hirer must make all payments due under the Contract without set-off or deduction of any kind.

### 4. DELIVERY AND REMOVAL

1. Delivery and collection charges payable by the Hirer are in addition to the hire/purchase costs.

2. The Hirer authorises the Owner to bring the Owner's vehicle onto the place where the equipment is to be used or is located to deliver and/or collect the equipment, either on the expiry of the hire period or on the breach by the Hirer of any term in these Conditions. The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner's actions under this clause.

3. The Hirer must make any requests for removal by telephone at completion of the hire.

### 5. OWNERS RIGHT TO CANCEL

1. The Owner may terminate the Contract by notice with immediate effect if the Owner believes the equipment to be at risk for any reason whatsoever including, but not limited to, the manner of its use by the Hirer or adverse weather or work conditions, or that the Hirer is unable to, or might be unable to, pay any hire charge or purchase price.

2. The Owner may terminate the Contract by notice with immediate effect if any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or other like person of the whole or any part of the Hirer's assets or business.

3. The Hirer grants the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter at any time onto any place where the equipment is situated or thought to be situated to remove the equipment in the event the Contract is terminated.

4. The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any equipment hired or monies payable by the Hirer pursuant to the Contract

5. The Owner will not be liable to the Hirer or any other person for any loss suffered or liability incurred arising from termination of the Contract or repossession of the equipment

6. Cancellation of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract.

#### **6. NO ASSIGNMENT**

1. The Contract is personal to the Hirer and is not capable of assignment whether in whole or in part by the Hirer. The Hirer shall not sublet (without the owner's consent) the equipment to any other person but this shall not prevent employees of the Hirer using the equipment in conformity with these Conditions.

#### **7. HIRER'S OBLIGATION**

1. Subject to clause 9, in the case of hired equipment, the Hirer is responsible for any loss or damage to the equipment from the time the Hirer takes possession of the equipment until it is returned to the Owner's possession. The Hirer shall notify the Owner by telephone immediately if the equipment is lost or damaged and shall follow all reasonable instructions of the Owner.

2. In the case of damage to the equipment, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost of all repairs to restore the equipment to the condition it was in at the time of hire.

3. In the case of loss of or irreparable damage to the equipment however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost to the Owner of replacing the equipment. The cost of the replacement shall be no less than the management book value of the equipment.

4. In addition to the costs set out in clauses 7.2 and 7.3, the Hirer shall be responsible for and shall indemnify the Owner for any loss of revenue suffered by the Owner due the unavailability of the equipment for hire due to loss or damage. The costs for lost revenue shall not exceed the equivalent prevailing rate for 120 days hire of the equipment.

5. The Hirer shall: 1. Take proper and reasonable care of the equipment, if the equipment is hired, return it (to the place of hire, unless otherwise specified in the Contract) in good order and condition; and 2. satisfy themselves that the equipment is suitable for the intended use; and 3. use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment; and 4. if the equipment is hired, immediately notify the Owner by telephone if the equipment suffers any damage, and 5. except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the equipment.

6. The Hirer warrants that all persons who use the equipment shall be COMPETENT and QUALIFIED to use the equipment, shall use the equipment in the manner it was designed to be used, and follow any instructions or directions from the Owner (if provided), local authorities, codes of practice or from the manufacturer of the equipment relating to the use and safety of the equipment and shall comply with all obligations in relation to the use and control of the equipment and person using said equipment to the Health and Safety in Employment Act 1992 and all other relevant legislation.

7. If the Hirer is not an individual, the person who signs the Contract on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations on the Hirer. The person so signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person so signing the Contract failing to have such power or authority.

#### **8. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

1. The Hirer acknowledges that title to the equipment remains with the Owner at all times. Equipment purchased from the Owner remains the property of the Owner until paid in full.

2. Hire or acquisition of equipment may create a security interest in the equipment. If so, the provisions of this clause 9 apply. All terms in this clause 9 have the meaning given in the PPSA and section references are to sections of the PPSA.

3. On the request of the Owner, the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under the Contract (including these Conditions) constitutes a perfected security interest in the equipment and their proceeds which will have priority over all other security interests in the equipment.

4. The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with the Contract.

5. The Hirer waives its rights under sections 114(1) (a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA.

#### **9. INSURANCE LEVY**

1. A 3% Insurance Levy may be charged for every hire of general or marquee equipment from the X-Site Group Ltd.

2. If the Hirer has paid the Insurance Levy, this means that the equipment hired is covered under the insurance held by the X-Site Group Ltd. However, in the event of any damage to or loss of any of the hired equipment, the hirer shall still be required to pay the first \$500 (for general hire equipment) or \$1000 (for marquee equipment) which makes up the excess of any claim payable by the X-Site Group Ltd.

3. If the hirer has decided to take out their own insurance, and therefore provided their own insurance cover for all general or marquee equipment hired (proof of such insurance must be provided prior to the hire), then the hirer will be responsible for the whole cost of replacement or repair to any damaged or lost equipment.

4. This PROVIDED THAT the hirer has ensured the premises where the equipment is located is secure at all times and that the hirer has acted reasonably to reduce the risk of the theft of equipment, and PROVIDED FURTHER THAT in the case of the occurrence of theft the hirer shall notify the Police (taking the name of the Police contact) and the X-Site Group Ltd, immediately.

5. For the avoidance of doubt, the hirer acknowledges that the Insurance Levy will not cover damage or loss due to mysterious disappearance, negligent acts or omissions of the hirer, earthquake and war damage. In this case the hirer will be responsible for whole and complete cost of repair to or replacement of any general or marquee hire equipment.

6. Special conditions or exclusions may apply depending on the nature or location of the hirer's use of the equipment

and these should be notified to the X-Site Group Ltd prior to the equipment leaving the X-Site Group's premises. Acceptance of these exclusions must be agreed upon by the hirer and the General Manager of the X-Site Group Ltd.

#### **10. LIMITATION OF LIABILITY**

1. In entering into the Contract, the Hirer acknowledges that the Owner has no liability to the Hirer for any indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with the Contract (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law.

2. Subject to the exclusion of liability in clause 10.1 above, the maximum aggregate liability of the Owner for all claims made by the Hirer, whether as a result of any breach of the Contract or on any other ground or terms whatsoever (including, but not limited to, liability as a result of tort, including negligence) will not exceed:

a. in the case of any equipment purchased by the Hirer, an amount of \$2,500; and

b. in the case of any equipment hired, the lesser of the hire charges paid by the Hirer to the Owner pursuant to the Contract and three months hire charges paid by the Hirer to the Owner pursuant to the Contract.

3. The Hirer will indemnify the Owner against any liability, losses, damages or expenses incurred or suffered by the Owner as a result of any claim made by a third person against the Owner in respect of any loss or liability arising from the contract or arising out of the use of the equipment hired or purchased by the Hirer

4. If the Hirer is acquiring the services for the purposes of a business as defined in the Consumer Guarantees Act 1993, clauses 10.1 and 10.3 are subject to any liability which arises under the Act. If the Hirer is acquiring or hiring the equipment for the purposes of a business, the provisions of that Act do not apply.

5. If the Hirer is purchasing equipment, then except as prohibited by law, all guarantees in respect of the equipment, whether express or implied, are excluded.

#### **11. GENERAL**

1. Headings are inserted for convenience and shall not affect the construction of the Contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying 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.

2. If at any time any provision of the 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 the Contract should be construed as if the provision or part thereof in question has been deleted.

3. Equipment purchased from the Owner remains the property of the Owner until paid for in full.

#### **12. PRIVACY ACT 1993**

1. If the Hirer is an individual, this clause 12.1 applies. In relation to the Contract the Owner will collect personal information about you. The information is principally

collected to evaluate the hire of equipment that you seek. The information is collected and held by the Owner. The failure to provide the information on the front of the Contract may result in your application to hire equipment being declined or the Contract subsequently being terminated by the Owner. The Hirer has rights of access to personal information contained in the 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 contracts entered into by the Hirer. The Hirer agrees to the Owner releasing to other party's information regarding the Contract if the Hirer does not comply with its obligations.

2. The Hirer and each person who signs the Owner's Application for Credit authorises the Owner:

a. To collect, retain and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or such other signatory's creditworthiness;

b. To disclose information about the Hirer or such other signatory:

1. To any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Hirer's obligations to the Owner;

2. To such persons as may be necessary or desirable to enable the Owner to exercise any power, enforcement or attempted enforcement of the Owner's rights, remedies and powers under the Contract including these Conditions.