

## **[1] Definitions**

- 1.1 “Pronto Hire” shall mean Pronto Hire, its successors and assigns or any person acting on behalf of and with the authority of Pronto Hire.
- 1.2 “Customer” means that person (or persons) entering into this contract and where that person (or persons) enters into this contract for or on behalf of another entity, includes such entity. This expression also extends to those claiming under (or authorised by) the Customer.
- 1.3 “Equipment” shall mean any Equipment (including but not limited to chattels machinery and plant including all fittings accessories, tool and parts) supplied on hire by Pronto Hire to the Customer and are as described on the invoices, quotation, work authorisation or any other forms as provided by Pronto Hire to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.4 “Vehicle” shall mean any Vehicle (including but not limited to either light or heavy Trucks) supplied by Pronto Hire to the Customer. The Vehicle shall be described on the invoices, quotation, work authorisation or any other forms as provided by Pronto Hire to the Customer.
- 1.5 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.6 “Goods” shall mean all Goods (including, but not limited to, all chattels, machinery and plant, including all fittings, accessories, tools, and parts) supplied by Pronto Hire to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Pronto Hire to the Customer.
- 1.7 “Services” shall mean all services supplied by Pronto Hire to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Equipment as defined above).
- 1.8 “Minimum Hire Period” shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Pronto Hire to the Customer.
- 1.9 “Trade Customers” are only those Customer’s whom Pronto Hire has agreed is currently entitled to trade credit terms.
- 1.10 “Price” shall mean the cost of the hire of the Equipment as agreed between Pronto Hire and the Customer subject to clause 3 of this contract.
- 1.11 “Contract Term” shall mean the agreed time period of the contract from the date of commencement as described on any Credit Application, quotation, work authorisation or invoice.

## **[2] Acceptance**

- 2.1 Any instructions received by Pronto Hire from the Customer for the hiring of Equipment and/or the Customer’s acceptance of Equipment supplied on hire by Pronto Hire shall constitute acceptance of the terms and conditions contained herein.
- 2.2 None of Pronto Hire’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of Pronto Hire in writing nor is Pronto Hire bound by any such unauthorised statements.
- 2.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of Pronto Hire.
- 2.5 The Customer shall give Pronto Hire not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Pronto Hire as a result of the Customer’s failure to comply with this clause.
- 2.6 Equipment and/or any Vehicle is supplied by Pronto Hire based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

## **[3] Contract Term**

- 3.1 The Customer acknowledges and agrees that these Terms and Conditions of Hire shall be valid for a Contract Term of up to ten (10) months from the date of commencement unless otherwise agreed in writing.

- 3.2 The Customer further acknowledges and agrees that there is no right of renewal of this contract unless otherwise agreed in writing.

#### **[4] Price & Payment**

- 4.1 The Equipment is hired at the rate shown on Pronto Hire's quotation offer unless there is a contrary agreement, in writing, between Pronto Hire and the Customer, Cartage, fuel, blade wear (moleplough, aerator) knife wear (chippers, augers, mulchers) chisel wear (breakers, etc.) tipwear (rippers, cultivators, etc.) as setout in the current product information and being measured by Pronto Hire and assessed at Pronto Hire's discretion, along with all saleable and consumable items are extra and not included in the hire rate. Pronto Hire reserves the right to revise product information and related charges from time to time without notice to the Customer.
- 4.2 The Customer acknowledges that the rate offer is that which is available at Pronto Hire's premises where the hiring took place and that the Customer has had every opportunity to check the rates applicable. Whether or not the Customer has checked those rates is the Customer's responsibility and whether the Customer does so is entirely at the Customer's discretion.
- 4.3 Pronto Hire reserves the right to change the Price in the event of a variation to Pronto Hire's quotation.
- 4.4 Except where Pronto Hire dispenses with this requirement a deposit and/or bond shall be paid or given at the commencement of the hire period such deposit or bond to be specified in the Contract at Pronto Hire's discretion.
- 4.5 At Pronto Hire's sole discretion;
- (a) payment shall be due before delivery of the Equipment, or
- (b) payment for approved Customer's shall be due fourteen (14) days following the date of the invoice.
- 4.6 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 4.7 With respect to "Non Trade Customers" time for payment shall be made on the date when the Equipment is returned, or within seven (7) days of the commencement of the hire period, whichever is earlier. Where the hire period is extended to more than seven (7) days then the hire charge shall be payable at the end of each seven (7) day period in respect of the prior seven (7) days and at the end of the term of hire in respect of the hire period not previously paid for.
- 4.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and Pronto Hire.
- 4.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.10 The Customer accepts and agrees Pronto Hire has right of recovery, and in the 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.

#### **[5] Delivery Of Equipment**

- 5.1 Subject to the express terms of this agreement, if Pronto Hire agrees to send the Equipment to the Customer at the expense of the Customer then delivery of the Equipment to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of Pronto Hire for the purpose of transmission to the Customer, is deemed to be a delivery of the Equipment to the Customer.
- 5.2 The costs of carriage and any insurance which the Customer reasonably directs Pronto Hire to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the price.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Customer is unable to take delivery of the Equipment as arranged then Pronto Hire shall be entitled to charge a reasonable fee for redelivery.
- 5.4 The Customer shall take delivery of the Equipment tendered notwithstanding that the specifications may differ from the specifications originally agreed to, provided that the Price shall be adjusted pro rata to the discrepancy.
- 5.5 The failure of Pronto Hire to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Pronto Hire shall not be liable for any loss or damage whatever due to failure by Pronto Hire to deliver the Equipment (or any of part of the Equipment) promptly or at all.

## **[6] Hire Period**

- 6.1 Hiring Charges shall commence from the time the Equipment is collected by the Customer from Pronto Hire's premises and continue until the return of the Equipment to Pronto Hire's premises, and/or until the expiry of the Minimum Hiring Period, whichever last occurs.
- 6.2 If the Equipment is not returned to Pronto Hire's premises within the hire period, then additional hiring charges shall be payable.
- 6.3 The business daily rate applies 1st and is chargeable for each 10 hour period of hire. Extra hours of hire will be charged additional, pro rata at the agreed rate.
- 6.4 The 24hr daily rate applies 1st and is chargeable for each 24 hour period of hire. Extra hours of hire will be charged additional, pro rata at the agreed rate.
- 6.5 The weekly rate applies to and is chargeable for hire with duration of 7 days or 7 consecutive 24 hour periods. Extra days of hire will be charged additional, pro rata at the weekly rate
- 6.6 The monthly rate applies to and is chargeable for hire with a minimum of 29 days. Extra days of hire will be charged additional, pro rata at the monthly rate.
- 6.7 Where hour meter/s mounted on the plant/or equipment are used to determine the hire charge, this record of use shall be in addition to the terms determined in clauses 4.2 to 4.7. Hour charges shall be calculated to the nearest half hour above the visual reading on the meter/s. Where the recording device is found not to be working either during or at the completion of the hire period then Pronto Hire will estimate the hours used and the onus is on the Customer to prove otherwise.
- 6.8 Should Pronto Hire agree with the Customer to deliver and collect the Equipment, hire charges shall commence from the time the Equipment leaves Pronto Hire's premises until Pronto Hire is notified by the Customer that the Equipment is available for collection. Notification shall constitute suspension of hire, providing notification is given by the Customer in time for the Equipment to be picked up and returned to Pronto Hire's premises by the required return time on the day the hire ceases. The required return times are no later than 5.30 p.m. week days, or by arrangement weekends or Public Holidays, or such earlier time as the hire period may terminate. In the event insufficient notice is given the Customer may at Pronto Hire's discretion be charged an extra 6 hours of hire.
- 6.9 If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse the Customer for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by Pronto Hire due to delays in access to the Equipment.
- 6.10 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 Pronto Hire. In the event of Equipment breakdown provided the Customer notifies Pronto Hire immediately and obtains an "OFF-HIRE" number as verification, hiring charges will not be payable 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 Customer.

## **[7] Customer's Responsibilities**

- 7.1 The Customer shall:
  - (a) notify Pronto Hire immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (b) use the Equipment properly and for the purpose for which it was designed acknowledging Pronto Hire gives no warranty as the "Equipment's" capacity;
  - (c) ensure only competent and qualified drivers and operators are given charge of the Equipment while in the Customer's possession and shall be responsible for all cleaning, lubrication and operating adjustments and for any damage occurring due to overloading mistakes or neglect in handling, operation etc during the hire period;
  - (d) at their own expense clean and keep the Equipment in good and substantial repair and condition and proper working order and pay all costs for replacements or repair required due to fire theft accident loss or otherwise during the hire period, provided the Customer shall not undertake any repair or servicing and if any repair or servicing appears desirable shall notify Pronto Hire immediately. On termination of the hire, the Customer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Pronto Hire. The Customer is not authorised to pledge Pronto Hire's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs;

- (e) provide all petrol, fuel, oil, cleaning and other materials and labour required for the operation of the Equipment and only fuel and lubricating oils approved by Pronto Hire shall be used. The Customer shall check fuel and oil and other levels every day before starting up the Equipment;
- (f) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment and the Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Pronto Hire for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Customer;
- (g) accept full responsibility for and indemnify Pronto Hire against all claims in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising, whether from the negligence of the Customer or any other persons including but without limitation where the Equipment is being operated for any reason by Pronto Hire their servants or agents;
- (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (i) accept full responsibility associated with any costs or liability due to the Equipment obstructing any person/s. The Customer shall also accept full responsibility associated with any costs or liability due to the Equipment being in a location that it shouldn't be or if the equipment or Pronto Hire incurs any fines, towage or seizure costs or impoundment costs while the Equipment is in the custody of the Customer;
- (j) Forthwith on request by Pronto Hire advise Pronto Hire of the whereabouts of the Equipment and allow Pronto Hire (it's agents, servants or contractors) to inspect and test the Equipment and for such purposes the Customer hereby gives irrevocable leave and licence to Pronto Hire (its' servants agents and contractors) to take possession of and remove the same and as agent of the Customer, enter upon any premises where the Equipment or any part of the same may be;
- (k) Accept full responsibility in compliance with all current codes of practice and regulations, including the Health and Safety in Employment act, current licences such as time licences and road user charges where necessary;
- (l) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
- (m) not exceed the recommended or legal load and capacity limits of the Equipment;
- (n) not use or carry any illegal, prohibited, or dangerous substance in, or on, the Equipment;
- (o) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (p) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
- (q) satisfy itself prior to taking delivery that the Equipment is suitable for its purposes.

7.2 The Customer of Vehicle Hire shall ensure that:

- (a) the water in the radiator and battery of the Vehicle is maintained at the proper level; and
- (b) the oil in the Vehicle is maintained at the proper level; and
- (c) the tyres are maintained at their proper pressure.
- (d) The Customer shall ensure that all reasonable care is taken in handling and parking the Vehicle and that it is left securely locked when not in use.
- (e) The Customer shall be liable for any parking or traffic infringement and will supply relevant details as required by the Police and/or Pronto Hire relating to any such parking or traffic infringement and offences, impoundment, towage and storage.

7.3 The Customer of Vehicle Hire shall not:

- (a) sublet or Hire the Vehicle to any other person; or
- (b) permit the Vehicle to be operated without their authority and then only by an authorised driver named on the front of this Agreement; or
- (c) operate the Vehicle or permit it to be operated in any race, speed test, rally, or contest, or on any closed road or non-public roadway; or
- (d) operate the Vehicle or permit it to be operated to propel or tow any other Vehicle; or
- (e) operate the Vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the Vehicle; or
- (f) drive or permit the Vehicle to be driven by any person if at the time of his driving the Vehicle the Customer or other person is not the holder of current driver's licence appropriate for the Vehicle.

- (g) carry any animals in any vehicle without the written permission of Pronto Hire.

## **[8] Pronto Hire's Right to Terminate**

- 8.1 Without prejudice to any other remedies available to Pronto Hire and notwithstanding any period of hire specified, Pronto Hire may terminate this hire contract without payment of compensation:
- (a) At any time by giving the Customer two (2) hours (or if Pronto Hire deems it appropriate such lesser period) notices of their intention to terminate. Such notice need not be in writing and shall be deemed sufficiently given if made to the Customer; or
- (i) the operator for the time being of the Equipment; or
- (ii) the occupier for the time being of the premises at which the Equipment is located.  
(Provided that notice is deemed to be given if the Equipment is removed with no person in attendance)
- (b) Without notice if the Customer shall commit any breach of these hire contract terms and conditions or the Customer commits any act of bankruptcy or being a company an application is made or a resolution is passed for its winding up or being a company a receiver, manager, liquidator (provisional or otherwise) or similar person of their assets or any of them is appointed or if any execution or distress shall be levied upon the Equipment or if any judgement against the Customer shall remain unsatisfied for seven (7) days or more or if the Customer makes an assignment or compromise for the benefit of their creditors or being a company is placed under statutory management or if it ceases to carry on business.
- 8.2 Upon the termination of the hire period Pronto Hire (it's agents, servants or contractors) shall be entitled to take possession of the Equipment; for this purpose the Customer hereby gives irrevocable leave and licence to Pronto Hire (it's agents, servants or contractors) to enter upon any land or premises of the Customer, or any other place (as the agent of the Customer) where the Equipment or any Pronto Hire in respect of any claims, damages or expenses made against or incurred by Pronto Hire arising out of any action taken under Section 6 of this Contract.

## **[9] Cancellation**

- 9.1 In the event that the Customer cancels delivery of Equipment the Customer shall be liable for any loss incurred by Pronto Hire (including, but not limited to, any loss of profits) up to the time of cancellation.

## **[10] Risk**

- 10.1 Pronto Hire retains ownership in the Equipment nonetheless; all risk for the Equipment passes to the Customer on delivery.
- 10.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Pronto Hire for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer. 10.3 The Customer will insure, or self insure, Pronto Hire's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to any person/s and/or property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 10.4 The Customer accepts full responsibility for and shall keep Pronto Hire indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

## **[11] Equipment Damage**

- 11.1 Subject to the clauses 11.2 and 11.3 the Customer is responsible for any loss or damage occurring to the Equipment (other than damage arising as a consequence of a breach by Pronto Hire of the guarantees provided by the CGA) from the time the Customer takes possession of the Equipment until it is returned to the possession of Pronto Hire. The cost of any replacement or repairs resulting from loss or damage will be charged to and payable by the Customer. The

Customer shall notify Pronto Hire immediately if the Equipment is lost or damaged and shall forthwith follow any reasonable request by Pronto Hire relating to Pronto Hire's enquiries into the loss and/or damage to the Equipment.

- 11.2 If the Customer has;-
- (a) notified Pronto Hire, in writing, of the full circumstances leading to the loss or damage to the Equipment within 24 hours of the loss or damage; and
  - (b) in the case of loss or damage caused by fire, storm, collision, accident, theft or burglary, lodged a full written complaint with the Police, and/or prepared an independent report as required by Pronto Hire within 24 hours of the loss or damage, and provided Pronto Hire with a copy of such complaint and/or report; and can establish, to Pronto Hire's reasonable satisfaction, that adequate precautions were taken by the Customer to ensure that any loss of or damage to the Equipment was not incurred due to negligence or carelessness of the Customer; then Pronto Hire can, in its sole discretion waive the Customer's liability for loss or damage.
- 11.3 Notwithstanding the provisions of clause 11.2 hereof the Customer will be liable for the full cost of repairs to or the replacement of the Equipment where the loss or damage has been caused by:-
- (a) misuse abuse, or overloading including overloading of motors or any other part of the Equipment; or
  - (b) mysterious disappearance or wrongful conversion including where Equipment is not reasonably locked and secured: or
  - (c) contravention of the conditions of this contract; or
  - (d) violation of any law or regulation; or
  - (e) damage to tyres and tubes by punctures or cuts; or
  - (f) lack of lubrication or other routine servicing by the Customer; or
  - (g) locating, using, loading, unloading transporting the Equipment on or over water, wharves, bridges or vessels of any kind; or
  - (h) damage caused by exposure to any corrosive substance; or
  - (i) negligence of the Customer where the Customer has failed by intent or lack of due care to take all responsible precautions to protect the Equipment from loss or damage; or
  - (j) consumption of alcohol and/or drugs; or
  - (k) loss or damage to tools, grease guns, hoses electric cords and all other similar accessories; or
  - (l) any combination of the foregoing.

## **[12] Business Purposes**

- 12.1 If the Customer hires or holds itself out as hiring the Equipment for the purposes of a business or in an other way which is not ordinarily used by a consumer (as defined in the CGA); or acquires or holds itself out as acquiring any consumables (e.g. goggles, earmuffs etc) for the purposes of a business or in any way acquires any consumables which are not ordinarily required by a consumer, then the Customer agrees to the following terms:
- (a) the conditions warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 (CGA) or implied by the common law will not apply and are excluded from this contract and in particular no warranty is made by Pronto Hire concerning the performance specifications or capacity of the Equipment or consumables.
  - (b) the Customer may not claim on any remedies set out in the CGA from Pronto Hire or manufacturer of the Equipment or consumables or from any manufacturer of the components or parts in the Equipment or consumables.
  - (c) Pronto Hire's liability shall be limited to replacement or repair (at Pronto Hire's option) of any Equipment or consumables it considered upon inspection to be defective.
  - (d) Pronto Hire shall not be responsible to the Customer or to third parties for any damage that may be done by Pronto Hire's delivery and collection vehicle or Pronto Hire's servants or agents on effecting delivery and/or collection of the Equipment.
  - (e) Pronto Hire and its employees contractors and agents and any manufacture/s of the Equipment, will not be liable to the Customer for any loss or damage however the loss or damage arises. This exclusion of liability includes but is not limited to, consequential loss or damage caused or arising from breakdown of the Equipment, delays in manufacturing or delivery, faulty installation, unreasonable use, negligence (including a failure to do something that may have prevented a failure) faulty specifications and design, and faulty material, equipment or component parts in the Equipment or consumables. The exclusion also includes costs incurred in returning the Equipment or consumables to Pronto Hire or to any manufacturer.
  - (f) the Customer indemnifies Pronto Hire against all claims whatsoever arising from the hire of the Equipment or acquisition of the consumables.

### **[13] Title of Equipment (Hire)**

- 13.1 The Equipment is and will at all times remain the absolute property of Pronto Hire.
- 13.2 If the Customer fails to return the Equipment to Pronto Hire then Pronto Hire or Pronto Hire's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated as the invitee of the Customer and take possession of the Equipment, without being responsible for any damage thereby caused.
- 13.3 The Customer is not authorised to pledge Pronto Hire's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

### **[14] Title of Goods (Sale)**

- 14.1 Pronto Hire and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Pronto Hire all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to Pronto Hire in respect of all contracts between Pronto Hire and the Customer.
- 14.2 Receipt by Pronto Hire of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Pronto Hire's ownership or rights in respect of the Goods shall continue.
- 14.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Pronto Hire shall have received payment and all other obligations of the Customer are met; and
  - (b) until such time as ownership of the Goods shall pass from Pronto Hire to the Customer, Pronto Hire may give notice in writing to the Customer to return the Goods or any of them to Pronto Hire. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Customer is only a bailee of the Goods and until such time as Pronto Hire has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Pronto Hire for the Goods, on trust for Pronto Hire; and
  - (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Pronto Hire will be the owner of the end products; and
  - (e) if the Customer fails to return the Goods to Pronto Hire then Pronto Hire or Pronto Hire's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and Pronto Hire will not be liable for any reasonable loss or damage suffered as a result of any action by Pronto Hire under this clause.

### **[15] Defects**

- 15.1 The Customer shall inspect the Equipment on delivery and shall within forty eight (48) hours notify Pronto Hire of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Pronto Hire an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Pronto Hire has agreed in writing that the Customer is entitled to reject, Pronto Hire's liability is limited to replacing the Equipment.

### **[16] Warranty**

- 16.1 No warranty is given by Pronto Hire as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. Pronto Hire shall not be responsible for any loss or damage to the Equipment, or caused by the Equipment, or any part thereof however arising.

**[17] Contractual Remedies Act 1979**

- 17.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

**[18] Default & Consequences Of Default**

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Pronto Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Pronto Hire.
- 18.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Pronto Hire from and against all costs and disbursements incurred by Pronto Hire in pursuing the debt including legal costs on a solicitor and own client basis and Pronto Hire's collection agency costs.
- 18.4 Pronto Hire shall be entitled to reclaim any Equipment in the Customer's possession or control, which has been supplied by Pronto Hire and shall be entitled to enter, directly or by its agents, upon any land or premises where Pronto Hire believes the Equipment If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 18.5 In the event that:
- (a) any money payable to Pronto Hire becomes overdue, or in Pronto Hire's opinion the Customer will be unable to meet its payment as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting, or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of any Customer; or
  - (d) any Equipment is not returned to Pronto Hire on its due date; then
  - (e) Pronto Hire shall be entitled to cancel all or any part of any order with the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
    - (i) all amounts owing to Pronto Hire shall, whether or not due for payment, immediately become due and payable;
    - (ii) Pronto Hire shall be entitled to reclaim any Equipment in the Customer's possession or control, which has been supplied by Pronto Hire and shall be entitled to enter, directly or by its agents, upon any land or premises where Pronto Hire believes the Equipment which it has supplied is stored without being liable to any person.

**[19] Security And Charge**

- 19.1 Despite anything to the contrary contained herein or any other rights which Pronto Hire may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Pronto Hire or Pronto Hire's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Pronto Hire (or Pronto Hire's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should Pronto Hire elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Pronto Hire from and against all Pronto Hire's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Pronto Hire or Pronto Hire's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 19.1.

**[20] Privacy Act 1993**

- 20.1 The Customer and the Guarantor/s (if separate to the Customer) authorise Pronto Hire to:
- (a) collect, retain and use any information about the Customer and/or the Guarantor/s, for the purpose of assessing the Customer's and/or the Guarantor/s creditworthiness or marketing products and services to the Customer and/or the Guarantor/s; and
  - (b) to disclose information about the Customer and/or the Guarantor/s, whether collected by Pronto Hire from the Customer and/or the Guarantor/s directly or obtained by Pronto Hire and/or the Guarantor/s from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or the Guarantor/s.
- 20.2 Where the Customer and/or the Guarantor/s are an individual the authorities under (clause 20.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Customer and/or the Guarantor/s shall have the right to request Pronto Hire for a copy of the information about the Customer and/or the Guarantor/s retained by Pronto Hire and the right to request Pronto Hire to correct any incorrect information about the Customer and/or the Guarantor/s held by Pronto Hire.

**[21] Personal Property Securities Act 1999 ("PPSA")**

- 21.1 To the extent that these Terms and Conditions of Hire do not exceed a twelve (12) month contract term, the Customer acknowledges that nothing in this agreement creates or provides for a security interest.
- 21.2 To the extent that these Terms and Conditions of Hire do exceed a twelve (12) month contract term, this agreement is the security agreement for the purposes of PPSA generally and in particular Section 36.
- 21.3 Where Pronto Hire is selling Goods subject to retention of title (clause 0), the Customer acknowledges that this agreement is the security agreement which creates a purchased money security interest in the Goods and the following PPSA clauses apply.
- 21.4 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by Pronto Hire to the Customer (if any) and all Goods that will be supplied in the future by Pronto Hire to the Customer.
- 21.5 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Pronto Hire may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Pronto Hire 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;
  - (c) not register a financing change statement or a change demand without the prior written consent of Pronto Hire; and
  - (d) immediately advise Pronto Hire of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 21.6 Pronto Hire and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 21.7 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 21.8 Unless otherwise agreed to in writing by Pronto Hire, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 21.9 The Customer shall unconditionally ratify any actions taken by Pronto Hire under clauses 21.1 to 21.8.

**[22] Signatory's Warranty As to Agency From Customer**

- 22.1 Where the Contract is signed by a person on behalf of the Customer (but the signatory is not the Customer named in the Contract) then the following provisions shall take effect:
- (a) the person signing the Contract warrants to Pronto Hire that he or she has the full authority of the Customer to enter into this Contract; and

- (b) the person signing this Contract on behalf of the Customer shall remain personally liable hereunder until all obligations of the Customer have been fully met or any monies due hereunder by the Customer to Pronto Hire; and
- (c) the person signing this Contract on behalf of the Customer acknowledges that Pronto Hire enters into this Contract in reliance upon the warranty given in clause 22.1 (a) and the acknowledgement of personal liability set out in clause 22.1 (b) hereof.

### **[23] General**

- 23.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.3 Pronto Hire shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Pronto Hire of these terms and conditions.
- 23.4 In the event of any breach of this contract by Pronto Hire the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of Pronto Hire exceed the Price of the Equipment.
- 23.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Pronto Hire.
- 23.6 Pronto Hire may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.7 Pronto Hire reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Pronto Hire notifies the Customer of such change.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 23.9 The failure by Pronto Hire to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Pronto Hire's right to subsequently enforce that provision.