

Pronto Hire – Terms & Conditions of Hire

<p>1. Definitions</p> <p>1.1 Contract means the terms and conditions contained herein, together with any Quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.2 Pronto Hire shall mean Amax Limited T/A Pronto Hire, its successors or assigns or any person acting on behalf of and with the authority of Amax Limited T/A Pronto Hire.</p> <p>1.3 Customer means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Pronto Hire to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and (d) includes the Customer's executors, administrators, successors and permitted assigns.</p> <p>1.4 Equipment means all Equipment (including any accessories, chattels, machinery, plant, tools and associated items, manuals, log books and vehicles (either light or heavy vehicles) as accompanies such Equipment) supplied on hire by Pronto Hire to the Customer (and where the context so permits shall include any incidental supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Pronto Hire to the Customer.</p> <p>1.5 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.</p> <p>1.6 Hire Period means the term of the hire of the Equipment as specified on the invoices, quotation, authority to hire, or any other work authorisation forms as provided and which may include weekends and/or public holidays, and continues until the supply of the Services is completed or the Hire Contract is terminated in accordance with these terms and conditions or such further period as agreed by the parties in writing.</p> <p>1.7 Site means the location/s at which the Equipment is to be operated.</p> <p>1.8 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.</p> <p>1.9 Confidential Information means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, Personal Information such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.10 Cookies means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Equipment for hire via the website.</p> <p>1.11 Charges shall mean the cost of the hire (including any Goods and Services Tax (GST) where applicable) of the Equipment as agreed between Pronto Hire and the Customer subject to clause 6 of this contract.</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Equipment.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Customer acknowledges that the supply of Equipment on credit shall not take effect until the Customer has completed a credit application with Pronto Hire and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Equipment request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Pronto Hire reserves the right to refuse Delivery.</p> <p>2.6 This Contract constitutes the entire Contract between the parties and contains all the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Contract.</p> <p>2.7 None of the Equipment shall be sublet or cross-hired by the Customer. The Customer shall not assign or transfer their interest in this Contract or part with possession of all or any portion of the Equipment without the prior written consent of Pronto Hire, which consent may be arbitrarily withheld.</p> <p>2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>2.9 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.</p> <p>3. Contract Term</p> <p>3.1 Unless otherwise agreed in writing, the Customer acknowledges and agrees that: (a) these Terms and Conditions of Hire shall be valid for a Contract Term of up to ten (10) months from the date of commencement or the period as outlined in the Hire Contract or other such agreement; and (b) there is no right of renewal of this Contract.</p> <p>4. Errors and Omissions</p> <p>4.1 The Customer acknowledges and accepts that Pronto Hire shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s): (a) resulting from an inadvertent mistake made by Pronto Hire in the formation and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Pronto Hire in respect of the Equipment hire and/or Services.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Pronto Hire, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>5. Change in Control</p> <p>5.1 The Customer shall give Pronto Hire not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number(s), change of trustees, 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.</p> <p>6. Charges and Payment</p> <p>6.1 At Pronto Hire's sole discretion the Charges shall be Pronto Hire's quoted price (subject to clause 6.2) which shall be binding upon Pronto Hire provided that the Customer shall accept Pronto Hire's quotation in writing within thirty (30) days.</p> <p>6.2 Consumables items including but not limited to, fuel, blade wear (moleplough, aerator) knife wear (chippers, augers, mulchers) chisel wear (breakers, etc.) tipwear (rippers, cultivators, etc.) street sweeper parts and brushes used in accordance with the Equipment hire are not included in Pronto Hire's quoted Price. Pronto Hire shall measure usage, and may at any time re-measure or re-value or require the consumables to be re-measured or re-valued and charge proportional additional Charges in accordance with clause 6.3. Pronto Hire current price list rates are on display at Pronto Hire's premises or are available on request (such rates are subject to change without notice).</p> <p>6.3 Pronto Hire reserves the right to change the Charges: (a) if a variation to the Equipment which are to be supplied is requested; or (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, safety considerations, prerequisite work by a third party not being completed, hard rock or other barriers below the surface or iron reinforcing rods in concrete, latent soil conditions, or hidden underground pipes and wiring, etc.) which are only discovered on commencement of the Services; or (d) for any consumable items used in accordance with the Equipment hire; or (e) in the event of increases to Pronto Hire in the cost of labour, fuels, materials or consumable items which are beyond Pronto Hire's control.</p> <p>6.4 Variations will be charged for on the basis of Pronto Hire's quotation, and will be detailed in writing, and shown as variations on Pronto Hire's invoice. The Customer shall be required to respond to any variation submitted by Pronto Hire within ten (10) working days. Failure to do so will entitle Pronto Hire to add the cost of the variation to the Charges.</p>	<p>6.5 At Pronto Hire's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Customer by within thirty (30) days of the return of the Equipment, provided that the Customer has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Customer under clause 16.2, and any outstanding balance thereof shall be due as per clause 6.6.</p> <p>6.6 Time for payment for the Equipment being of the essence, the Charges will be payable by the Customer on the date/s determined by Pronto Hire, which may be: (a) payment for approved Customers shall be due twenty (20) days following the end of the month in which a delivered is posted to the Customer's address or address for notices; (b) the date specified on any invoice or other form as being the date for payment; or (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Pronto Hire.</p> <p>6.7 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A - section 18(a) to 18(f) of the Construction Contracts Amendment Act 2015.</p> <p>6.8 Pronto Hire may in its discretion allocate any payment received from the Customer towards any invoice that Pronto Hire determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Pronto Hire may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Pronto Hire, payment will be deemed to be allocated in such manner as preserves the maximum value of Pronto Hire's Purchase Money Security Interest (as defined in the PPSA) in the Equipment. Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Pronto Hire.</p> <p>6.10 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by Pronto Hire nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Pronto Hire is a claim made under the Construction Contracts Act 2002.</p> <p>6.11 Should the Customer wish to query or dispute any of the content of an invoice submitted by Pronto Hire, then this dispute must be provided to Pronto Hire within five (5) days from receipt of the invoice so the issue can be resolved in timely manner.</p> <p>6.12 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Customer must pay to Pronto Hire an amount equal to any GST Pronto Hire must pay for any supply by Pronto Hire under this or any other agreement for the hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.</p> <p>6.13 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.</p> <p>Hire Period</p> <p>7.1 Where the Equipment does not have a timing device installed hire Charges shall be: (a) the twenty-four (24) hour daily rate for each twenty-four (24) hour period of hire; or (b) the weekly rate for hire with a duration of seven (7) days or seven (7) consecutive twenty-four (24) hour periods; or (c) the monthly rate for hire with a minimum of twenty-nine (29) days; and (d) extra hours and/or days of hire will be charged additional, pro rata at the agreed rate.</p> <p>7.2 If the Equipment is not returned to Pronto Hire's premises within the Hire Period, then additional hiring Charges shall be payable.</p> <p>7.3 For Equipment in which a timing device is installed the Hire Period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession. This record of use shall be in addition to the terms determined in clauses 7.1. 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.</p> <p>7.4 The Customer acknowledges that (unless advised otherwise by Pronto Hire) usage is limited to: (a) daily rate / 6 hours; (b) weekly rate / 30 hours; (c) monthly rate / 120 hours; Extra hours used above the allowed engine hour usage will be charged out at a pro-rata hourly rate as an excess charge.</p> <p>7.5 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 5:00pm weekdays, 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 six (6) hours of hire.</p> <p>7.6 If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse Pronto Hire 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.</p> <p>7.7 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless Pronto Hire confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies Pronto Hire immediately, hiring charges will not be payable during the time the Equipment is being repaired, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.</p> <p>7.8 Equipment may be equipped with a Global Positioning System ("GPS") device, such reports derived from the GPS may be used without prejudice as prima facie evidence in the event of any dispute, subject to clause 24. GPS reports and data are for the use of Pronto Hire only.</p> <p>8. Delivery</p> <p>8.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that: (a) the Customer or the Customer's nominated carrier takes possession of the Equipment at Pronto Hire's address; or (b) Pronto Hire (or Pronto Hire's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.</p> <p>8.2 The Customer accepts full responsibility for the loading and unloading of Equipment at the Site. If the Customer has instructed a third party to conduct this on behalf of the Customer, all liability for any loss or damage to the Equipment shall remain with the Customer.</p> <p>8.3 Further to the above clause 8.2, the Customer shall indemnify Pronto Hire against any damage to property (including but not limited to driveways, footpaths, walls, paved areas, lawns and buildings) caused by the Customer whilst loading or unloading the Equipment.</p> <p>8.4 At Pronto Hire's sole discretion the cost of delivery is in addition to the Charges.</p> <p>8.5 Pronto Hire may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.</p> <p>8.6 Any time specified by Pronto Hire for delivery of the Equipment is an estimate only and Pronto Hire will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that Pronto Hire is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer, then Pronto Hire shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.</p> <p>9. Risk</p> <p>9.1 Pronto Hire retains property in the Equipment nonetheless; all risk for the Equipment passes to the Customer on delivery.</p> <p>9.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Pronto Hire for all loss theft or damage to the Equipment however 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.</p> <p>9.3 The Customer will insure Pronto Hire's interest in the Equipment against physical loss or damage for the duration of the term of hire including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to 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.</p> <p>9.4 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, damage to property, or otherwise arising out of the use of</p>	<p>the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.</p> <p>10. Access</p> <p>10.1 The Customer shall ensure that Pronto Hire has clear and free access to the Site at all times to enable them to undertake the Services. Pronto Hire shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas).</p> <p>10.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Pronto Hire.</p> <p>11. Compliance with Laws</p> <p>11.1 The Customer and Pronto Hire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.</p> <p>11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.</p> <p>11.3 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Pronto Hire agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Site or where they may be acting as a subcontractor for the Customer who has engaged a third party head contractor.</p> <p>12. Insurance</p> <p>12.1 Pronto Hire shall have public liability insurance of at least five million dollars (\$5m). It is the Customer's responsibility to ensure that they are similarly insured.</p> <p>13. Title</p> <p>13.1 The Equipment is and will at all time remain the absolute property of Pronto Hire.</p> <p>13.2 If the Customer fails to return the Equipment 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 Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>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.</p> <p>14. Personal Property Securities Act 1999 ("PPSA")</p> <p>14.1 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 Equipment and/or collateral (account) – being a monetary obligation of the Customer to Pronto Hire for Services – that have previously been supplied and that will be supplied in the future by Pronto Hire to the Customer.</p> <p>14.2 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 Equipment charged thereby; (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Pronto Hire.</p> <p>14.3 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.</p> <p>14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.</p> <p>14.5 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.</p> <p>14.6 The Customer shall unconditionally ratify any actions taken by Pronto Hire under clauses 14.1 to 14.5.</p> <p>14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>14.8 Not to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall clause 14 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 14 will apply generally for the purposes of the PPSA.</p> <p>15. Security and Charge</p> <p>15.1 In consideration of Pronto Hire agreeing to supply the Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>15.2 The Customer indemnifies Pronto Hire from and against all Pronto Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Pronto Hire's rights under this clause.</p> <p>15.3 The Customer irrevocably appoints Pronto Hire and each director of Pronto Hire as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.</p> <p>16. Customer's Responsibilities</p> <p>16.1 The Customer shall: (a) maintain the Equipment as is required by Pronto Hire and as specified in the Equipment's operators manual (including, but not limited to, maintaining water, oil, grease and fluid levels, tyre pressures and perform a pre-inspection check at the commencement of every working day or shift, whichever the shorter time period); (b) immediately cease operation of the Equipment and notify Pronto Hire by telephone should any warning light display or any gauges such as the Equipment's temperature gauge indicate overheating or other potential mechanical faults. Should the Customer fail to observe such indications, they agree to indemnify Pronto Hire from any damage thus caused; (c) notify Pronto Hire immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification; (d) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes; (e) only use the appropriate fuel/oil as determined by Pronto Hire and as specified in the Equipment's operators manual, and maintain at the appropriate levels at all times. Upon completion of the Hire Period, the Equipment must be returned with fuel tanks full and oil levels at full mark; (f) be responsible for checking and ensuring that the tow Equipment meets the legal towing requirements of the Equipment (including, but not limited to, current registration and warrant of fitness); (g) ensure that all persons driving and/or operating the Equipment: (i) are suitably instructed in the Equipment's safe and proper use are competent and qualified drivers, and where necessary are fully licensed to drive with the appropriate class and/or operate the Equipment (and shall provide evidence of the same to Pronto Hire upon request); (ii) are not under the influence of alcohol or any drug that may impair their ability to operate the Equipment; (iii) do so safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Pronto Hire or posted on the Equipment; (h) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by Pronto Hire or posted on the Equipment; (i) ensure that all reasonable care is taken in handling and/or parking the Equipment and that it is left securely locked when not in use and when parking wheeled Equipment on an incline, that the park brake is securely applied and that 2 wheel chocks be put directly behind the lower side of a wheel on each side of the Equipment; (j) comply with all occupational health and safety laws relating to the Equipment and its operation; (k) keep the Equipment in their own possession and control; (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;</p>
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<p>(m) not:</p> <p>(i) 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;</p> <p>(ii) exceed the recommended or legal load and capacity limits of the Equipment; use or carry any illegal, prohibited or dangerous substance in or on the Equipment;</p> <p>(iii) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freshhold;</p> <p>(iv) arrange or undertake any repairs, service or salvage without the authorisation of Pronto Hire to do so;</p> <p>(v) operate the Equipment in any race, speed test, rally, performance or contest, or on any closed road or non-public roadway;</p> <p>(vi) permit the Equipment to be operated without their authority and then only by an authorised driver named on the front of this Contract;</p> <p>(vii) carry any animals in any vehicle without the written permission of Pronto Hire;</p> <p>(viii) allow the Equipment to:</p> <p>(A) be operated by any person under the influence of alcohol or any drug or intoxicating substance that affects their ability to operate the Equipment;</p> <p>(B) convey, propel or tow any other Equipment or object other than those supplied by Pronto Hire, or agreed to in writing by Pronto Hire;</p> <p>(C) carry more passengers or a greater load (weight) than the legal capacity of the Equipment;</p> <p>(D) carry passengers for hire or reward of any kind;</p> <p>(E) be used when it is damaged or unsafe;</p> <p>(F) be used in such a manner as would permit an insurer to decline any claim;</p> <p>(G) towed on a road which is not properly formed and constructed as a sealed road.</p> <p>(n) be liable for:</p> <p>(i) 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; and</p> <p>(ii) unauthorised repairs to the Equipment.</p> <p>(o) on termination of the hire, deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Pronto Hire.</p> <p>16.2 Immediately on request by Pronto Hire the Customer will pay:</p> <p>(a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off, or not returned to Pronto Hire;</p> <p>(b) a cleaning fee as determined by Pronto Hire to clean the Equipment and to discharge any soil or waste products;</p> <p>(c) the cost of fuels and consumables provided by Pronto Hire and used by the Customer or those needed to top up the fuel or oils to full when returned;</p> <p>(d) any costs incurred by Pronto Hire in picking up and returning the Equipment to the Owner's premises if the Customer does not return the Equipment to the Owner's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;</p> <p>(e) any lost hire fees Pronto Hire would have otherwise been entitled to for the Equipment, under this, or any other Hire Contract;</p> <p>(f) any insurance excess payable in relation to a claim made by either the Customer or Pronto Hire in relation to any damage caused by, or to, the Hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or Pronto Hire's.</p> <p>17. Damage Waiver/Insurance</p> <p>17.1 Subject to clause 17.2 a Loss, Theft, and Damage Waiver (LTD Waiver) charge (being an additional ten percent (10%) of Pronto Hire's Dry Hire rates) will be applied to all Dry Hire.</p> <p>17.2 The Customer shall not be required to pay the LTD Waiver fee if the Customer produces a Certificate of Currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment. The COC must be provided to Pronto Hire prior to the supply of Equipment by Pronto Hire and Pronto Hire must be named as the interested party and that the insurance covers the cost of the Equipment hire whilst being repaired. Pronto Hire will provide the value of which the Equipment is to be insured to the Customer. When the Customer is not required to pay the LTD Waiver Excess and provides a COC, the Customer will be liable for the hire charge while the Equipment is unable to be used as a result of the loss, theft or damage, until repaired, replaced or rectified to the satisfaction of Pronto Hire.</p> <p>17.3 The LTD Waiver is NOT insurance, but is an agreement by Pronto Hire to limit your liability in certain circumstances only for loss, theft, or damage, to Pronto Hire's Equipment for an amount called the LTD Waiver Excess. The Customer is not entering into a contract of insurance with Pronto Hire by paying for the LTD Waiver Excess. The LTD Waiver Excess is explained below.</p> <p>17.4 The LTD Waiver Excess per claim for each item of Equipment is the amount equal to the amount needed to cover the recovery and repair costs of the Equipment or three thousand dollars (\$3,000) plus GST for any one item as scheduled in the Hire Contract (including but not limited to, all transport and hire costs of subsequent Equipment to and from a site, used in the recovery of any damaged, lost or stolen Equipment), whichever is the lesser amount, or as otherwise agreed between both parties.</p> <p>17.5 Even if the Customer has paid the LTD Waiver fee, Pronto Hire shall not waive Pronto Hire's rights to claim against the Customer for loss, theft or damage to the Equipment and the LTD Waiver shall not apply if the loss, theft or damage:</p> <p>(a) has arisen as a result of the Customer breaching a clause of this hire agreement;</p> <p>(b) has been caused by a negligent act or omission by the Customer or the machine has been bogged, or stuck in mud, ponds, wetlands, lakes, rivers, sea or waterways;</p> <p>(c) has arisen as a result of the Customer's use of the Equipment in violation of any law(s);</p> <p>(d) has been caused by the Customer's failure to use the Equipment for its intended purpose or in accordance with Pronto Hire's instructions or the manufacturer's instructions;</p> <p>(e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;</p> <p>(f) has been caused by a lack of lubrication or a failure to service or properly maintain the Equipment;</p> <p>(g) has been caused by a collision with a vehicle, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;</p> <p>(h) has been caused by the overloading of the Equipment or any components thereof;</p> <p>(i) is to motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extensions leads with the electrical Equipment;</p> <p>(j) is caused by exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc;</p> <p>(k) is caused by vandalism;</p> <p>(l) is to tyres or tubes;</p> <p>(m) is to glass;</p> <p>(n) is caused by the wilful actions of the Customer, their employees, sub-contractors or agents.</p> <p>17.6 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 or loss of the Equipment, and/or damage or loss to property arising out of the use or provision 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, particularly in the event that clauses 17.1 to 17.5 are voided for any reason.</p> <p>17.7 Further special conditions or exclusions may also apply, details of which will be provided by Pronto Hire prior to the commencement of the hire. A breach of these special conditions will be considered a breach of the Contract.</p> <p>17.8 Pronto Hire and Customer agree and acknowledge that Section 11 of the Insurance Law Reform Act 1977 will apply with respect to the exclusions in clauses 17.5 - 17.7 inclusive as if clause 17 constituted a contract of insurance (notwithstanding that clause 17 is NOT a contract of insurance).</p> <p>18. Wet Hire</p> <p>18.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of Pronto Hire.</p> <p>18.2 In the event of Wet Hire, the operator of the Equipment remains an employee of Pronto Hire and operates the equipment in accordance with the Customer's instructions. Pronto Hire shall not be liable for any actions of the operator in following the Customer's instructions.</p> <p>19. Underground Locations</p> <p>19.1 Prior to Pronto Hire commencing any work the Customer must advise Pronto Hire of the precise location of all underground services on the Site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections,</p>	<p>sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site.</p> <p>19.2 Whilst Pronto Hire will take all care to avoid damage to any underground services the Customer agrees to indemnify Pronto Hire in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 19.1.</p> <p>20. Defects</p> <p>20.1 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.</p> <p>21. Consumer Guarantees Act 1993</p> <p>21.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).</p> <p>22. Default and Consequences of Default</p> <p>22.1 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 a 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.</p> <p>22.2 If the Customer owes Pronto Hire any money the Customer shall indemnify Pronto Hire from and against all costs and disbursements incurred by Pronto Hire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Pronto Hire's collection agency costs, and bank dishonour fees).</p> <p>22.3 Further to any other rights or remedies Pronto Hire may have under this contract, if the Customer has made payment to Pronto Hire, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Pronto Hire under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.</p> <p>22.4 Without prejudice to any other remedies Pronto Hire may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Pronto Hire may suspend or terminate the supply of Equipment to the Customer. Pronto Hire will not be liable to the Customer for any loss or damage the Customer suffers because Pronto Hire has exercised its rights under this clause.</p> <p>22.5 Without prejudice to Pronto Hire's other remedies at law Pronto Hire shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Pronto Hire shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Pronto Hire becomes overdue, or in Pronto Hire's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit allowed by Pronto Hire;</p> <p>(c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>23. Cancellation</p> <p>23.1 Without prejudice to any other rights or remedies Pronto Hire may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice(s)) then Pronto Hire may suspend the Services immediately. Pronto Hire will not be liable to the Customer for any loss or damage the Customer suffers because Pronto Hire has exercised its rights under this clause.</p> <p>23.2 Pronto Hire reserves the absolute right to:</p> <p>(a) cancel, terminate, or determine this Contract;</p> <p>(b) immediately repossess the Equipment;</p> <p>(c) at any time before or during the hire period, without reason, without prior notice, without payment of compensation and without prejudice to any other rights which Pronto Hire may have against the Customer. Pronto Hire or its agents may enter any property or premises as per clause 23.1 where the Equipment may be kept, for this purpose.</p> <p>23.3 In addition to clause 23.2 in these terms and conditions, Pronto Hire shall be entitled to cancel the Contract if:</p> <p>(a) Pronto Hire reasonably believes that a third party may attempt to take possession of the Equipment; or</p> <p>(b) the Equipment is at risk.</p> <p>23.4 In the event that the Customer cancels this Contract the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Pronto Hire (including, but not limited to, any loss of profits) up to the time of, or as a direct result of the cancellation, notwithstanding that at Pronto Hire's sole discretion where appropriate notice is not received the Customer shall:</p> <p>(a) forfeit any bond paid; and</p> <p>(b) be liable for all monies due and payable up to the date of cancellation.</p> <p>24. Dispute</p> <p>24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).</p> <p>25. Privacy Policy</p> <p>25.1 All emails, documents, images or other recorded information held or used by Pronto Hire is Personal Information as defined and referred to in clause 25.3 and therefore considered confidential. Pronto Hire acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" (the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Pronto Hire acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Pronto Hire that may result in serious harm to the Customer, Pronto Hire will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>25.2 Notwithstanding clause 25.1, privacy limitations will extend to Pronto Hire in respect of Cookies where transactions for purchases/orders transpire directly from Pronto Hire's website. Pronto Hire agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to Pronto Hire when Pronto Hire sends an email to the Customer, so Pronto Hire may collect and review that information ("collectively Personal Information").</p> <p>25.3 In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Pronto Hire's website.</p> <p>25.4 The Customer authorises Pronto Hire or Pronto Hire's agent to:</p> <p>(a) access, collect, retain and use any information about the Customer;</p> <p>(i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Customer.</p> <p>(b) disclose information about the Customer, whether collected by Pronto Hire from the Customer directly or obtained by Pronto Hire 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.</p> <p>25.4 Where the Customer is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>25.5 The Customer shall have the right to request Pronto Hire for a copy of the Personal Information about the Customer retained by Pronto Hire and the right to request Pronto Hire to correct any incorrect Personal Information about the Customer held by Pronto Hire.</p>	<p>25.6 The Customer shall have the right to request (by e-mail) from Pronto Hire, a copy of the Personal Information about the Customer retained by Pronto Hire and the right to request that Pronto Hire correct any incorrect Personal Information.</p> <p>25.7 Pronto Hire will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>25.8 The Customer can make a privacy complaint by contacting Pronto Hire via e-mail. Pronto Hire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at http://www.privacy.org.nz/comply/comptop.html.</p> <p>26. Suspension of Services</p> <p>26.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Customer hereby expressly acknowledges that:</p> <p>(a) Pronto Hire has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:</p> <p>(i) the payment is not paid in full by the due date for payment in accordance with clause 6.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or</p> <p>(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or</p> <p>(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Pronto Hire by a particular date; and</p> <p>(iv) Pronto Hire has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.</p> <p>(b) if Pronto Hire suspends work, it:</p> <p>(i) is not in breach of Contract; and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and</p> <p>(iii) is entitled to an extension of time to complete the Contract; and</p> <p>(iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid and an adjudicator's determination has not been completed with.</p> <p>(c) if Pronto Hire exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to Pronto Hire under the Contract and Commercial Law Act 2017; or</p> <p>(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Pronto Hire suspending work under this provision;</p> <p>(d) due to any act or omission by the Customer, the Customer effectively precludes Pronto Hire from continuing the Services or performing or complying with Pronto Hire's obligations under this Contract, then without prejudice to Pronto Hire's other rights and remedies, Pronto Hire may suspend the Services immediately after serving on the Customer a written notice specifying the payment default, or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Pronto Hire as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.</p> <p>26.2 If pursuant to any right conferred by this Contract, Pronto Hire suspends the Services and the default that led to that suspension continues unremedied subject to clause 23.1 for at least ten (10) working days, Pronto Hire shall be entitled to terminate the Contract, in accordance with clause 23.</p> <p>27. Service of Notices</p> <p>27.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>28. Trusts</p> <p>28.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trusts ("Trusts") then whether or not Pronto Hire may have notice of the Trust, the Customer consents with Pronto Hire as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Customer will not without consent in writing of Pronto Hire (Pronto Hire will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>29. General</p> <p>29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, enforceability, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>29.2 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 Auckland District Court of New Zealand.</p> <p>29.3 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 (alternatively Pronto Hire's liability shall be limited to damages which under no circumstances shall exceed the Charges).</p> <p>29.4 Pronto Hire may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.</p> <p>29.5 The Customer cannot assign or licence without the written approval of Pronto Hire.</p> <p>29.6 Pronto Hire may elect to subcontract out any part of the provision Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Pronto Hire's sub-contractors without the authority of Pronto Hire.</p> <p>29.7 Pronto Hire serves the right to change any of their general terms and conditions displayed on their website (including their Privacy Policy) at any time by notifying the Customer through the website and/or by disclosing such to the Customer in writing for any subsequent future contracts. The Customer's continued use of the Pronto Hire website, or otherwise at such time as the Customer makes a further request for Pronto Hire to provide Goods/Equipment or Services to the Customer, shall be deemed acceptance of the terms and conditions which takes effect from that date. Pronto Hire's current terms and conditions can be viewed on http://www.prontohire.co.nz.</p> <p>29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.</p> <p>29.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
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