

## CONDITIONS OF HIRE

### 1. INTERPRETATION

- (a) **Definitions:** In this Agreement unless the context otherwise requires:  
**Agreement** means this hire agreement which includes the Application Form and these Conditions of Hire;  
**Application Form** means the Credit Application and Terms of Credit;  
**Business Day** means a day other than Saturday or Sunday on which registered banks are open for ordinary over-the-counter banking business in Auckland, New Zealand;  
**TMC** means Traffic Management & Control Ltd;  
**Default Interest Rate** means the rate of two per cent above TMC's bank's overdraft interest rate;  
**Equipment** means all Temporary Traffic Management (TTM) equipment and products, parts and materials and any other products or materials hired from TMC by the Customer from time to time as agreed by the parties;  
**GST** means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax;  
**Hire Commencement Date** means the time and date on which the Equipment is first made available to the Customer  
(i) for pick up from the Premises; or  
(ii) for delivery by TMC to the agreed location  
**Hire Period** means the period commencing on the Hire Commencement Date and ending on the date that the Customer returns the Equipment to the Premises or this Agreement is terminated under clause 9;  
**Hire Rate** means the cost of hiring each piece of Equipment for any specified period as notified by TMC to the Customer from time to time (plus GST); and  
**Premises** mean TMC's premises situated at **14 Harrow Street, Dunedin** or such other location as specified by TMC from time to time.

### 2. HIRE OF EQUIPMENT

The Customer acknowledges and agrees that, unless expressly agreed to in writing by TMC, the terms and conditions set out in this Agreement will apply in relation to the hire of all Equipment from TMC.

### 3. PAYMENT OBLIGATIONS

- (a) In consideration for TMC agreeing to hire the Equipment to the Customer, the Customer will pay to TMC the Hire Rate for each piece of Equipment at all times during the Hire Period (plus GST).  
(b) If required by TMC, the Customer will pay a deposit of not more than the estimated total rental payable under clause 3(a) prior to the Hire Commencement Date. On return of the Equipment, the actual total charges will be calculated and the Customer will be required to pay or will be refunded with the difference between the deposit and the actual total rental payable under clause 3(a).  
(c) Subject to the terms of this Agreement, the Customer will pay all amounts payable under this Agreement immediately upon the expiry of the Hire Period or such other period as agreed to by TMC provided that payment will not be made later than the 20th day of the month following the date on which TMC issues the Customer with an invoice for the relevant amount.  
(d) TMC reserves the right to reverse any agreed discount for charge account customers if the account is not paid by the 20<sup>th</sup> of the month following the date of the invoice.  
(e) The Customer will pay all amounts due under this Agreement in cleared funds without any deduction, set-off or counterclaim whatsoever.  
(f) Without prejudice to TMC's other remedies under this Agreement at law or otherwise, if the Customer does not make any payment due under this Agreement when due, TMC may charge default interest at the Default Interest Rate on the overdue amount for the period from the due date for payment until the actual date of payment. Default interest will be calculated on a daily basis and compounded monthly. In addition the Customer will pay to TMC all costs and expenses incurred by TMC in recovering any money due or in connection with the exercise or attempted exercise of any of its rights or remedies under this Agreement, (including without limitation all collection commissions and legal costs charged on a solicitor and client basis).

### 4. CUSTOMER'S OBLIGATIONS

The Customer agrees and acknowledges that it will:

#### *Transport and Installation of Equipment*

- (a) arrange with TMC a delivery time and date for TMC to deliver and install the equipment at the agreed location, on behalf of the Customer and at the Customer's cost. TMC will have no liability to the Customer if it is unable to deliver the Equipment at the agreed time or date; or  
(b) where arrangement has been made with TMC, be responsible for uplifting the Equipment from the Premises and transporting the Equipment at the Customer's own risk and expense to and from the agreed location;  
(c) where arrangement has been made with TMC, be responsible for the installation and dismantling of the Equipment;

#### *Use of Equipment*

- (d) only use the Equipment for its intended purpose;  
(e) take proper and reasonable care of the Equipment and return it in a clean and tidy condition and in the same order it was in at the Hire Commencement Date (or to otherwise pay on demand TMC's reasonable cleaning charges and costs of repair if the Equipment is not returned in the same condition as it was on the Hire Commencement Date);

- (f) obtain all necessary licences, permits and permissions for the use of the Equipment throughout the term of this Agreement;  
(g) comply with all applicable laws, regulations and by-laws (including, but not limited to, the Health & Safety in Employment Act 1992) in relation to the use of the Equipment;  
(h) ensure that at all times the Equipment is used solely for the purpose intended by the manufacturer, within the Equipment's design capabilities and limitations, and in accordance with the manufacturer's and/or TMC's instructions;  
(i) carry out all necessary servicing of the Equipment required to maintain the Equipment in good working order at all times during the Hire Period;  
(j) promptly notify TMC if the Equipment or any part thereof is lost, stolen, destroyed, damaged, or breaks down provided that the loss, theft or destruction of or damage to the Equipment will not affect the continuance of this Agreement or the Customer's liability to pay the Hire Rate during the Hire Period;

#### *Protection of TMC's Rights in Equipment*

- (k) protect TMC's interest in the Equipment, including making it clear to third parties that TMC owns the Equipment;  
(l) not place, or allow to be placed, on the Equipment any marks that are inconsistent with TMC's ownership;  
(m) not remove or obscure any of TMC's identification marks on the Equipment;  
(n) not remove the Equipment from New Zealand;  
(o) not remove the Equipment from the agreed location unless disclosed to and in agreement with TMC;  
(p) not allow any other person to use the Equipment or give any other person any interest in, or any form of encumbrance or security over, the Equipment, or authorise any other person to do any of the above;  
(q) allow TMC and its employees and contractors access to the Equipment all at times during the Hire Period (wherever it is situated) for the purposes of inspecting, testing or repairing the Equipment;  
(r) keep the Equipment at all times in the possession and control of the Customer free from distress, execution or other legal process, and not remove the same without the consent in writing of TMC. If the Equipment or any part thereof is removed, seized or taken out of the possession or withheld from the Customer, the Customer will immediately give written notice to TMC of the address of the place where the Equipment or part thereof may be and the name of the person who removed, seized or took the Equipment out of the Customer's possession;

#### *Liability*

- (s) The Customer shall be responsible for, and shall indemnify TMC, for any loss, theft or damage to the equipment that occurs from the time the Customer takes possession of the equipment until it is returned to TMC's possession, including:  
(i) in the case of damage, the full cost of all repairs to restore the equipment to the condition it was in at the time of hire to a maximum per item of \$1000 plus GST; and  
(ii) in the case of loss, theft or irreparable damage to the equipment however caused, the full cost to TMC of replacing the equipment to a maximum per item of \$1000 plus GST  
(t) in addition to the costs set out in clause (r) the Customer shall be responsible for and shall indemnify TMC for any loss of revenue suffered by TMC due to the unavailability for the equipment for hire due to loss, theft or damage.

#### *Insurance*

- (u) at all times during the Hire Period maintain public liability insurance and full replacement insurance with reputable insurers and on such terms as approved from time to time by TMC (such approval not to be unreasonably withheld). The Customer will provide to TMC, whenever reasonably requested by TMC to do so, written evidence of compliance by the Customer with its obligations under this clause;

#### *Indemnity*

- (v) indemnify TMC, its agents and subcontractors at all times against any loss, damage or cost including consequential loss or damage suffered or incurred by TMC, its agents and subcontractors as a direct or indirect result of a breach by the Customer of any of its obligations or warranties under this Agreement or from the Customer's hire, possession or use of the Equipment including without limitation any loss or damage which occurs to the Equipment during the Hire Period or if the Equipment is not returned to TMC in the same condition as it was in at the Hire Commencement Date.

### 5. WARRANTIES

- (a) The Customer acknowledges that the Customer has inspected the Equipment and has relied on such inspection in deciding to hire. Except as expressly set out in this Agreement the Customer acknowledges that TMC has made no warranty as to the Equipment's condition, quality and suitability for the Customer's purpose and that the Customer has satisfied itself that the Equipment is suitable for the Customer's intended use.  
(b) If the Customer is not an individual, the person who signs this Agreement on behalf of the Customer warrants that they have authority to bind the Customer and will, in any event, be personally liable for the performance of the obligations of the Customer.

### 6. LIMITATION OF LIABILITY

The parties acknowledge that:

- (a) nothing expressed or implied in this Agreement will confer any liability on TMC in respect of any direct, indirect, consequential or special loss, damage, cost or expense suffered or incurred by the Customer however it may arise, including, but not limited to, as a direct or indirect result of a breach by TMC of any of its obligations under this Agreement, negligence of TMC, or by operation of law;
- (b) notwithstanding clause 6(a), the maximum liability of TMC to the Customer under these Conditions of Hire will be limited to repairing or replacing the Equipment (at TMC's option), provided that if the Equipment cannot be promptly repaired TMC will provide the Customer with replacement Equipment (if such Equipment is available); and
- (c) that where the Customer is acquiring, or holds itself out as acquiring, the Equipment for the purposes of a business, in terms of section 43(2) of the Consumer Guarantees Act 1993, the Customer will not assert or attempt to assert any rights or claims against TMC under the provisions of that Act.
- (d) no employee, agent or contractor of TMC is authorised to make any statement or representations as to the equipment, its fitness for purpose, or with respect to the Customer's proposed use of the equipment (other than providing information relating to the proper operation and maintenance of the equipment). The Customer shall not be entitled to rely or to seek to rely upon any such statement or presentation made by an employee, agent or contractor of TMC, and (without limiting clause 6(a)) the Customer acknowledges that the owner shall have no liability for any loss arising out of the Customer's reliance on any such statement.

**7. TITLE**

The Customer acknowledges that ownership of the Equipment remains at all times with TMC and that expect in accordance with this Agreement that the Customer is a bailee of the Equipment only and has no rights, title or interest in the Equipment.

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

All terms in this clause 8 have the meaning given in the PPSA and section references are references to sections of the PPSA. The Customer acknowledges that this Agreement creates in favour of TMC a first ranking security interest in the Equipment and that TMC may register a financing statement to that effect against the Customer. The Customer agrees:

- (a) to promptly execute any documents, provide all necessary information and do anything else required by TMC to ensure that the security interest created under this Agreement constitutes a perfected security interest in the Equipment;
- (b) to pay to TMC all fees and expenses incurred by TMC in relation to the filing of a financing statement in connection with this Agreement; and
- (c) that nothing in sections 133 and 134 of the (PPSA) applies to this Agreement, and to the extent they are applicable to the Customer, waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133, and 134 of the PPSA and to receive a copy of any Verification Statement (as that term is defined in the PPSA).

**9. TERMINATION**

- (a) TMC may terminate this Agreement immediately if the Customer:
  - (i) fails to pay any money payable under this Agreement by the due date;
  - (ii) fails to strictly observe any of the provisions of this Agreement;
  - (iii) does not comply with or is subject to a prosecution under the provisions of the Health and Safety in Employment Act 1992 in respect of the Equipment;
  - (iv) allows a judgment or order against the Customer to remain unsatisfied for more than seven days;
  - (v) becomes insolvent or makes an assignment to or composition with creditors;
  - (vi) is the subject of an order being made or an effective resolution being passed for winding-up of the Customer;
  - (vii) has a receiver, manager, administrator or similar officer appointed in respect of its assets; or
  - (viii) commits or causes any act or omission to occur which in the reasonable opinion of TMC may in any way damage the Equipment.
- (b) Notwithstanding clause 9(a), TMC may terminate this Agreement (and any hire agreements made pursuant to this Agreement) at any time by 5 Business Days notice to the Customer.
- (c) On termination of this Agreement for any reason, the Customer will:
  - (i) immediately return the Equipment to any address notified to the Customer at the Customer's cost in all respects; and
  - (ii) pay to TMC all rental and other moneys due to TMC and unpaid at the date of termination.
- (d) If the Customer fails to return the Equipment, TMC may take action as necessary to retake possession of the Equipment at the cost of the Customer. For the purposes of this provision, the Customer grants to TMC an irrevocable right for TMC and its agents, employees and contractors to enter into any land, buildings or premises where the Equipment is, or is supposed to be and to search for, remove and retake possession of the Equipment without being liable in any way to the Customer or to anyone claiming under the Customer for so doing.
- (e) The Customer indemnifies TMC against any and all claims that may arise as a result of TMC repossessing the Equipment pursuant to this clause.

**10. PRIVACY ACT 1993**

If the Customer is an individual, the Customer acknowledges that TMC is collecting the personal information provided in the Application Form about the Customer and will collect personal information regarding the Customer during the course of the Customer's dealing with TMC. The Customer further authorises TMC at any time to disclose and to seek personal information in relation to the Customer's credit worthiness or credit history from any third party. The Customer acknowledges that all personal information collected will be used to assess the Customer's credit worthiness and in relation to the ongoing operation of the Customer's account. Failure to supply any personal information requested may result in the Customer's application for credit being rejected or the Customer's

account with TMC being terminated. If the Customer is an individual, the Customer acknowledges it has a right to access the information about itself held by TMC and may request correction of that information, provided that TMC may charge a reasonable fee for providing access to such information.

**11. MISCELLANEOUS**

- (a) In the event of inconsistency between these Conditions of Hire and the terms of any quotation, Application Form or other agreement these terms will take precedence.
- (b) The Customer agrees that (except as provided in these Conditions of Hire) these terms, the Application Form and the details concerning the hire of Equipment to be agreed by the parties under this Agreement, represent the entire agreement between the Customer and TMC in respect of the hire of Equipment.
- (c) This Agreement will not be modified, amended, waived, in whole or in part, except by written agreement between the parties.
- (d) The Customer will not assign any of its rights, title or interest under this Agreement without the prior written consent of TMC.
- (e) This Agreement will be construed in accordance with and be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the New Zealand courts.
- (f) If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof will in any way be affected or impaired thereby to the intent that this Agreement should be construed as if the provision or part thereof in question has been deleted.
- (g) If TMC makes any indulgence or concessions to the Customer under this Agreement then that will not be a waiver of TMC's rights or operate as a variation to the terms of this Agreement.

I/We have read and understand the conditions of hire.

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_