

## HIRE AGREEMENT TERMS AND CONDITIONS

### 1. Definitions

#### 1.1 In this Agreement:

- (a) All capitalised words are defined terms and, except where expressly provided below, have the meaning given to them by the Hire Agreement.
- (b) "Agreement" means the Hire Agreement, together with these Terms and Conditions.
- (c) "Default Interest Rate" means two percent per month compounding on the 20th day of each month or such other rate as Porters shall notify the Customer in writing.
- (d) "Hire Agreement" means the document with that name and all schedules attached thereto, that has been produced by Porters, has been signed by the Customer, and is subject to these Terms and Conditions.
- (e) "Levy" means a fee or levy (as determined by Porters from time to time) to meet (in whole or in part) direct or indirect costs incurred or expected to be incurred by Porters in connection with the operation of its business including, without limitation, in compliance with Environmental Law.
- (f) "Environmental Law" means statutes, statutory provisions and other laws, and orders, directives, regulations, instruments, by-laws, codes or other subordinated legislation, in connection with or in relation to the Environment or the protection thereof.
- (g) "Environment" has the meaning given to that term by section 2 of the Resource Management Act 1991.
- (h) "Equipment" means the item described in Schedule Two of the Hire Agreement and includes all accessories and other equipment of Porters attached to or used in connection with the Equipment. The Equipment also includes any equipment or other item substituted for the Equipment by Porters which substitution has been consented to in writing by the Customer. The Customer will not unreasonably withhold its consent to such substitution by Porters.
- (i) "Fee" means the amount specified in Schedule One of the Hire Agreement subject to adjustment in accordance with clause 5. Where the Fee is an estimated amount based on a calculation, the Fee shall be the amount calculated based on actual quantities, subject to the minimum amount specified in the estimate.
- (j) "Limited Damage Waiver" means any arrangement made or deemed to be made under clause 4.3.
- (k) "Other Agreement" means any other deed or agreement between Porters or any other member of the Porter Group and the Customer that may be entered into at any time before, on or after this Agreement.
- (l) "persons under the control of the Customer" means the employees and the agents of the Customer and any other person who may be at any time under the control or direction of the Customer including but not limited to, sub-contractors, independent contractors and their employees or agents.
- (m) "Porter Group" means any and all of:
  - (i) Porter Finance Limited; Porter Hire Limited; Porter Equipment Limited; Porter Haulage Limited, Porter Access Hire Limited, Porter Cranes Limited, Porter Mechanical Limited, Porter Parts Limited; and/or Porter Properties Limited ; and
  - (ii) Any other company (whether incorporated in New Zealand or otherwise) which is related to any company specified in (i) above in the manner provided in section 2(3) of the Companies Act 1993.
- (n) "Porters" means Porter Hire Limited.
- (o) "Term" means, subject to clause 2, the period from and including Date Start (specified in Schedule One of the Hire Agreement) and ending on and including Est. Date End (specified in Schedule One of the Hire Agreement).

### 2. Term of Hire

2.1 Porters hires to the Customer, and the Customer takes on hire from Porters, the Equipment for the Fee and otherwise on the terms and conditions of this Agreement. The hireage is for the Term, unless earlier terminated in accordance with this Agreement.

2.2 No later than at least three months prior to the end of the Term, the Customer may give written notice to Porters that the Customer wishes to

extend the Term. Porters may, but is under no obligation to, extend the Term on terms, including the Fee, notified by Porters to the Customer.

2.3 In the event that there is no Term specified in the Hire Agreement of this Agreement, the parties expressly agree that the Term of this Agreement is a term of 12 months less one day from the Date Start.

2.4 The Customer must return the Equipment at the end of the Term, provided that Porters will allow a grace period of 1 hour, without charge (until 9.00am on the day following the last day of the Term) for return of the Equipment unless otherwise agreed in writing by Porters.

2.5 Where the Customer does not return the Equipment in accordance with clause 2.4 then, without prejudice to Porters other rights and remedies, the Customer will continue to be bound by the Customer's obligations under this Agreement as if the Term had come to an end when the Equipment is returned to Porters.

2.6 The Customer has no right to terminate the hireage before the end of the Term. Notwithstanding this, if the Customer returns the Equipment, terminates or purports to terminate the hireage, before the end of the Term (with or without the consent of Porters) the Customer will pay to Porters the total Fee for the Term and any resulting costs and losses (including indirect economic and consequential losses) suffered or incurred by Porters as a result of such return, termination or purported termination.

### 3. Porters' undertakings

#### 3.1 Porters undertakes with the Customer as follows:

- (a) Porters must make the Equipment available to the Customer on the Date Start.
- (b) If the Equipment is destroyed or damaged and any insurance money paid to Porters by an insurance company pursuant to any claim is, in the opinion of Porters, adequate to replace or repair the Equipment, Porters shall apply the insurance money to this purpose. Pending such repair or replacement, the Customer will be liable to pay the Fee to Porters as set out in clause 5 and to perform all other obligations to be performed by the Customer for the remainder of the Term, and/or on account of any other indebtedness of the Customer to Porters or any other member of the Porter Group, in each case as if such destruction or damage had not occurred. The Customer will pay to Porters any shortfall between the insurance proceeds received and the cost to Porters of replacing the Equipment with like equipment or repairing the Equipment. If in the opinion of Porters, any insurance money received is not adequate to repair or replace the Equipment or if any insurance cover is declined then Porters will notify the Customer of its opinion or that insurance cover has been declined and such notification will terminate this Agreement. Termination will not affect any rights, remedies, obligations or liabilities of either party for any act, omission, or other matter whatsoever arising prior to the termination of the Agreement and the Customer will be liable to pay the Fee to Porters as set out in clause 5 and to perform all other obligations to be performed by the Customer for the remainder of the Term, and/or on account of any other indebtedness of the Customer to Porters or any other member of the Porter Group, in each case as if this Agreement had not been terminated. The Customer will pay to Porters any shortfall between the insurance proceeds received and the cost to Porters of replacing the Equipment with like equipment.

### 4. Customer's undertakings

#### 4.1 The Customer undertakes with Porters as follows:

- (a) The Customer is responsible for arranging and paying for the carriage of the Equipment to and from Porters' premises or such other premises as notified by Porters to the Customer and is responsible for all loss or damage to the Equipment whatsoever during the carriage. Delivery and collection by a member of the Porter Group will be to and from the footpath unless and agreed otherwise by Porters.
- (b) During the Term, the Equipment is at the Customer's risk. Except where the Customer's liability is limited as set out in clause 4.3, the Customer is responsible for all loss or damage whatsoever to the Equipment (other than fair wear and tear which is deemed to exclude any loss or damage to buckets, teeth or hoses, excessive wear on ground engaging parts, paint scratches, glass and panel damage and tyre damage (including punctures, cuts or blow outs)) including, without limitation, the cost of repairs suffered or incurred by Porters in consequence of any breakdown or damage to the Equipment where

such breakdown or damage is caused by any act or omission or misdirection or misuse of the Equipment on the part of the Customer or persons under the control of the Customer, and any costs, loss or damage due to overloading mistakes or neglect in handling.

(c) The Customer will supply a suitably qualified, licensed, and competent operator to operate the Equipment.

(d) The Customer will at its own expense supply and top up as necessary all fuel, oil, lubricating oil, cleaning and other consumables necessary for the operation of the Equipment and is responsible for checking fuel, oil, lubricants and carrying out other operating checks prior to use of the Equipment on a daily basis. Only fuel and lubricating oils approved by Porters shall be used.

(e) The Customer will ensure the Equipment is kept in proper working order at the Customer's own expense, fair wear and tear excepted provided that fair wear and tear does not include any loss or damage to buckets, teeth or hoses, excessive wear on ground engaging parts, paint scratches, glass and panel damage and tyre damage (including punctures, cuts or blow outs)). The Customer will immediately advise Porters if the Equipment requires or is likely to require repair, replacement, service, maintenance, or other similar work required to ensure the Equipment is kept in proper working order.

4.2 If it has been indicated in the Hire Agreement that the Customer will insure the Equipment, then the Customer will, in addition to any other requirements specified in writing by Porters from time to time:

(a) At its cost arrange for all insurances associated with or in respect of the Equipment and its use on terms and with a New Zealand insurance company approved by Porters, including but not limited to insurance against fire, theft, accident and damage while in the Customer's possession.

(b) Ensure that the insurance policy is a full replacement insurance policy that provides for a maximum excess of \$5,000 (which is payable by the Customer) including without limitation coverage for hire charges, transit costs and public liability. Without limiting Porters' rights to claim loss of revenue from the Customer, the insurance policy must also include, at a minimum, coverage for Porters' loss of revenue while the Equipment is being repaired or replaced, calculated for the purposes of this clause by multiplying the applicable hourly rate specified in Porters' then current price list or such other rate as notified by Porters to the Customer from time to time (and in either case whether before, on or after the Date Start, or whether before, on or after the expiry of the hire period) by 6 hours per day for 3 calendar months ("Three Months' Revenue").

(c) Make a claim at any time the Equipment is destroyed or damaged or at any other time directed by Porters.

(d) Agree to Porters, in the place of the Customer, making a claim or continuing any claim already made by the Customer, and agree to transfer to Porters, at Porters' request, all of its rights and entitlements in this regard.

(e) The insurance policies must show Porters as the insured party and must provide for duplicate renewal notices to be sent to Porters which has the right at any time to inspect the policy and to pay any outstanding premiums not paid by the Customer and add them to the Fee and such outstanding premiums will become immediately due and payable by the Customer. The Customer must ensure that at least 14 days prior written notice is given to Porters of the expiry or proposed termination of the insurance policies.

(f) If any money is paid to the Customer by the insurance company pursuant to any claim or otherwise, the Customer shall be deemed to hold that money in trust for Porters and shall immediately pay such money to Porters.

(g) If, for any reason whatsoever, the Customer in breach of this clause does not hold the required insurance (or any insurance at all), or the Customer's insurer does not pay out on the relevant policy, the Customer warrants to Porters that it will personally be responsible for and liable to Porters for all of the obligations set out in this clause and that it will pay to Porters the full market replacement value of the Equipment (as notified by Porters to the Customer) within 7 days of request by Porters in writing.

(h) The Customer must, on the date of signing of this Agreement and at any other time requested by Porters, provide to Porters evidence of insurances taken out. If the Customer does not provide such evidence, or does not provide evidence to the satisfaction of Porters, Porters may provide Limited Damage Waiver for the Equipment with effect from the Date Start or such other date as is specified by Porters on the terms set out in clause 4.3 and the Customer will be liable for the surcharge set out in that clause together with all other costs and fees incurred by Porters.

(i) The Customer acknowledges that the Customer may be liable to Porters (including, without limitation, under this clause 4) to an extent greater than any proceeds which Porters may receive under any insurance policy contemplated by this clause 4.2.

#### Limited Damage Waiver

4.3 If it has been indicated in the Hire Agreement that the Limited Damage Waiver will apply for the Equipment (or if no selection of Insurance Option 1 or Option 2 has been made), then:

(a) A surcharge of 10% of the Fee will be added and paid by the Customer on receipt of an invoice from Porters.

(b) Subject to clauses 4.3(c) and (d), where the Equipment suffer loss or damage (other than loss or damage to buckets, teeth or hoses, excessive wear on ground engaging parts, paint scratches, glass and panel damage and tyre damage (including punctures, cuts or blow outs) which are not covered by the Limited Damage Waiver), the Customer's liability to Porters in relation to such loss or damage is limited to the aggregate total of the following:

(i) One months' revenue, calculated for the purposes of this clause by multiplying the applicable hourly rate specified in Porters' then current price list or such other rate as notified by Porters to the Customer from time to time (and in either case whether before, on or after the Date Start, or whether before, on or after the expiry of the hire period) by 6 hours per day for 1 calendar months; and

(ii) Any fines, penalties, infringement fees or other similar costs imposed by any authority having jurisdiction to do so (irrespective of whether the Customer has used the Equipment for an authorised or unauthorised purpose); and

(iii) Either:

(1) Where Porters is insured with a third party, the excess payable pursuant to that insurance policy to a maximum of \$5,000; or

(2) Where Porters is not so insured with a third party, \$5,000.

(c) The limitation of the Customer's liability contained in clause 4.3(b) will not apply if, before, on or after the date the Equipment suffer the loss or damage, any one or more of the following apply:

(i) The Customer is in breach of this Agreement including without limitation, as to payment of the Limited Damage Waiver surcharge pursuant to clause 4.3(b)(i); or

(ii) The Customer has breached (whether remedied or otherwise) or is currently in breach of any Other Agreement with any member of the Porter Group; or

(iii) The Customer has breached (whether remedied or otherwise) or is currently in breach of any applicable laws; or

(iv) The Customer has breached (whether remedied or otherwise) or is currently in breach of the manufacturer's or Porters' instructions; or

(v) The loss or damage to the Goods is caused or contributed to by the Customer's or any other person's (whether permitted or otherwise by the Customer) intentional, malicious, reckless, dishonest, fraudulent or deliberate act or omission; or

(vi) The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), operating the Equipment under the influence of drugs, alcohol or other prohibited substance;

(vii) The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), using the Equipment for any purpose that is not permitted by the manufacturer or that would void the warranty provided by the manufacturer when the Equipment was new, or subjecting the Equipment to pollution, corrosive substance or contamination; or

(viii) The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), operating the Equipment without being licensed to do so, or failing to comply with any licence conditions; or

(ix) The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), operating the Equipment while having been directed by a medical or other professional person not to operate the Equipment or any similar equipment due to any health condition, illness, medical treatment, or medication; or

(x) The Equipment is seized by any authority having jurisdiction to do so or any creditor of the Customer; or

(xi) The loss or damage to the Equipment is caused or contributed to by an event which the Customer could have prevented or mitigated by taking reasonable steps to prevent the loss or damage occurring; or

(xii) The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), operating the Equipment in connection with hazardous stock, merchandise, chemicals or in other hazardous situations, including without limitation where the Equipment is deliberately, knowingly or recklessly exposed to a

material risk of damage or loss, of where damage or loss of the Goods is reasonably foreseeable, obvious or imminent; or  
(xiii)

The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), operating the Equipment for the purposes of a protest, civil disruption, unlawful purpose, or criminal activity; or  
(xiv)

The loss or damage to the Equipment is caused or contributed to by the Customer, or any other person (whether permitted or otherwise by the Customer), operating the Equipment for the purpose of carrying passengers; or  
(xv)

The Customer, or any other person operating the Equipment (whether permitted or otherwise by the Customer), does not provide Porters or the police or other regulatory authority with all assistance and information required to fully investigate and determine the circumstances surrounding the loss or damage of the Equipment, does not do anything reasonably required by Porters to mitigate any loss, liability or damage incurred by Porters, or fails to report to Porters or the police or regulatory authority if required by Porters (including failing to take any required breath or blood test for drug or alcohol use).

(d) The Customer acknowledges that the Limited Damage Waiver applies only to liability owed by the Customer to the Porter Group that relates to or flows from the loss or damage of the Equipment and does not limit, prejudice, affect or otherwise exclude any other liability, loss, damage or obligation that the Customer owes to:

- (i) any third party; or
- (ii) Porters or the Porter Group, that does not relate to or flow from the loss or damage of the Goods, including without limitation, a breach of this Agreement including, without limitation, under this clause 4.

(e) The Customer agrees that the Limited Damage Waiver is not a contract of insurance.

4.4 Notwithstanding any indication in the Hire Agreement, Porters reserves the right at time before or during the hire term to decline or cancel Limited Damage Waiver, in which case either (at Porters' discretion):

- (a) The Customer must insure to Porters' satisfaction in accordance with clause 4.2; or
- (b) Porters may terminate this Agreement and the Customer will have no claim, right or remedy against Porters for such termination or in any other way howsoever.

4.5 The Customer is responsible for and Porters will not be liable for any losses, costs or damages suffered, whether direct or indirect as a result of any down time incurred by the Customer while the Equipment is being serviced, maintained or repaired.

4.6 The Customer will not make any alterations to or modify the Equipment without the prior written consent of Porters and will not remove any identification features on the Equipment or any part of the Equipment.

4.7 The Customer will not dispose of, create a Security Interest (as that term is defined in the Personal Property Securities Act 1999) in, encumber, charge, sell, sublet, hire or part with possession of the Equipment and will not allow any lien to be created over the Equipment for the cost of repairs or otherwise. The Customer will not on-hire the Equipment or in any other way part with possession of the Equipment to a third party without the prior written consent of Porters.

4.8 The Customer will immediately notify Porters in writing of any loss or damage to the Equipment, including but not limited to mechanical breakdown.

4.9 The Equipment will be situated at the Site during the Term, or at such other location as may be agreed from time to time by Porters and Customer. The Customer will keep the Equipment safe and secure at all times when not in use.

4.10 If required by Porters, the Customer will obtain a written acknowledgement from the registered proprietor or landlord, and the mortgagee if applicable, of any land on which the Equipment may be located acknowledging that Porters owns the Equipment and that the registered proprietor or landlord, and the mortgagee of the land, has no right to distrain the Equipment and has no other rights in respect of the Equipment.

4.11 The Customer will only use or permit the Equipment to be used for the Type of Work, unless otherwise agreed in writing by Porters.

4.12 The Customer will be responsible for all road user charges and any offences committed which involve the Equipment, including but not limited to traffic infringements, parking fines, fines for overloading, operating without the correct licence, or carrying hazardous Equipment without the correct permits or licences. The Customer will pay any administration fee charged by Porters in respect of any such offences, infringements or fines.

4.13 The Customer agrees and acknowledges that:

(a) Porters has not made any representation that the Equipment is of an acceptable quality, durability, or fitness nor that the Equipment is new equipment or equal to new;

(b) The Customer does not rely on Porters' skill or judgment as to the quality, durability or fitness of the Equipment for any particular purpose; and

(c) The Customer enters into this Agreement solely in reliance upon its own judgment as to the quality, durability and fitness of the Equipment for the Customer's purposes, and the risk in these respects is borne by the Customer.

4.14 The Customer agrees and acknowledges that the Equipment was supplied by Porters on a fully operational basis and that the Customer:

(a) Will before using the Equipment:

- (i) Ensure that all safety checks appropriate for the use of the Equipment are carried out; and
- (ii) Conduct and be satisfied as to a risk assessment of all work sites at which the Equipment will operate, including identifying possible hazards for its employees and other persons operating, or in the vicinity of, the Equipment.

(b) Will carry out prestart daily inspection reports in accordance with Porters' specifications from time to time before using the Equipment. These inspection reports must be made available on request by Porters.

(c) Acknowledges that it is aware of its obligations and duties under the Health and Safety at Work Act 2015 and warrants that the Customer:

- (i) Has written rules and procedures relating to health and safety which the Customer will follow to ensure the safety of its employees and all persons operating, or in the vicinity of, the Equipment;
- (ii) Will ensure that all persons who use the Equipment are competent to do so and will use it in the manner it was designed to be used, follow any directions from Porters, local authorities, codes of practice or from the manufacturer of the Equipment relating to the use and safety of the Equipment, and will comply with all obligations in relation to the use and control of the Equipment and ensure persons using the Equipment comply with the Health and Safety at Work Act 2015 and all other relevant legislation;
- (iii) Is responsible for all health and safety obligations in respect of the Equipment and will take all practicable steps to eliminate, isolate, and minimise any hazards or risks for its employees or other persons operating, or in the vicinity of, the Equipment and ensure the safety of any person operating the Equipment or other persons in the vicinity of the Equipment; and
- (iv) Will maintain a register of accidents and conform with any code of practice and regulations which relate to the particular work being undertaken by the Equipment.

## 5. Fee

5.1 The Fee is to be paid in full without deduction, set off, or counterclaim with payments to be made to Porters in the manner set out in the Hire Agreement or in such other manner as Porters may specify from time to time.

5.2 The Fee will be charged for the whole Term and no adjustment will be made for any time during which the Equipment is not in use unless otherwise agreed in writing by Porters.

5.3 Subject to clauses 5.4 and 5.5, the Fee payable by the Customer to Porters is the greater of:

- (a) The Fee specified in the Hire Agreement; or
- (b) The amount calculated by multiplying the applicable hourly rate specified in Porters' then current price list or such other rate as notified by Porters to the Customer from time to time (and in either case whether before, on or after the Date Start, or whether before, on or after the expiry of the Term) by the number of hours the Equipment is operated by the Customer or persons under the control of the Customer, as determined by Porters; or
- (c) The number of days the Equipment is in the possession of or in the control of the Customer or persons under the control of the Customer (including beyond the end of the Term) multiplied by 6 hours per day multiplied by the applicable hourly rate specified in Porters' then current price list or such other rate as notified by Porters to the Customer from time to time (and in either case whether before, on or after the Date Start, or whether before, on or after the expiry of the Term).
- (d) The Customer acknowledges that the hourly rates referred to above may alter on one or more occasions during the Term.

5.4 The Customer acknowledges that it is liable for the Fee specified in the Hire Agreement as a minimum fee irrespective of actual usage of the Equipment by the Customer.

5.5 Where the Equipment has been damaged or destroyed, the Customer will be liable to pay the Fee for the greater of the Term and the period

commencing on the Date Start and ending on the date upon which repair or replacement of the damaged or destroyed Equipment has been completed (the Equipment being deemed to be in the Customer's possession under clause 5.3(c) until the Equipment is repaired or replaced). Where Porters has received loss of revenue insurance proceeds (clause 4.2) in respect of such damage or destruction, the Customer's liability to pay the Fee will be reduced by the amount of insurance proceeds actually received by Porters.

5.6 In addition to the Fee, the Customer will also pay any Levy charged by Porters to the Customer immediately upon receipt of an invoice for the same by the Customer.

5.7 On or before the Date Start or at any other time requested by Porters, the Customer will provide to Porters a bond in cash or other cleared funds as permitted by Porters, in the amount of:

- (i) \$500 for Equipment less than 2 tonne; or
- (ii) \$1000 for Equipment greater than 2 tonne ("the Bond").

5.8 On return of the Equipment by the Customer, Porters may use the whole or any part of the Bond against the costs incurred by Porters pursuant to clause 7.1 or any other amounts outstanding by the Customer to Porters. Porters will pay the balance (if any) to the Customer.

5.9 The use of the Bond by Porters is without prejudice to any other rights or remedies available to Porters, including but without limitation under any indemnity given by the Customer to Porters.

## 6. Indemnity and Liability

6.1 The Customer indemnifies Porters and its directors, employees, contractors and agents against any liability for any direct, indirect or consequential injury, loss, damage or cost arising directly or indirectly out of any act or default or omission of, or any representations made by the Customer or by any servant, agent, employee or contractor, of the Customer.

6.2 To the extent permitted by law, all warranties, conditions or obligations imposed on Porters at law, in equity, or otherwise are expressly excluded.

6.3 To the extent permitted by law, Porters or its directors, employees, contractors and agents shall not be liable for any loss, damage or liability of any kind whatsoever (including indirect or consequential losses or loss of profit, business, revenue, or goodwill) whether suffered or incurred by the Customer or another person and whether in contract, tort (including negligence), or otherwise, and whether such loss or damage arises directly or indirectly from the Equipment or any other Equipment or services provided by Porters to the Customer or otherwise.

6.4 If, for any reason a court finds, despite clause 6.3, that Porters is liable to the Customer then, to the maximum extent permitted by law, such liability will be limited to \$10,000.

## 7. Expiration of the Term

7.1 This Agreement will terminate at the end of the Term and subject to clause 2.4 the Customer shall deliver the Equipment to Porters or such other party as Porters directs in good working order, repair, condition, and appearance as it was when delivered to the Customer, fair wear and tear only excepted. Notwithstanding the foregoing or anything to the contrary in this Agreement:

- (a) The Customer will ensure the Equipment is returned with a full tank of fuel;
- (b) The Customer is liable for and will indemnify Porters against all loss or damage to buckets, teeth or hoses, excessive wear on ground engaging parts, paint scratches, glass and panel damage and tyre damage (including punctures, cuts or blow outs) irrespective of whether such loss or damage arose from fair wear and tear;
- (c) The Customer will be liable for and will indemnify Porters against the cost of reconditioning any Equipment rendered by the Customer unfit for further service.

## 8. Ownership of the Equipment

8.1 Porters retains full title to the Equipment notwithstanding:

- (a) The delivery of the Equipment to the Customer;
- (b) The possession and use of the Equipment by the Customer; and /or
- (c) Any temporary attachment of the Equipment to any land or premises to facilitate the use of the Equipment.

## 9. Inspection

9.1 Porters or anyone authorised by Porters may inspect the Equipment at any reasonable time.

9.2 Porters or anyone authorised by Porters may enter any place where the Equipment is kept or believed to be kept for inspection or testing purposes. The Customer will provide all necessary assistance to obtain the consent of the registered proprietor, landlord, and/or any mortgagee of any land upon which the Equipment is situated to the entry by Porters for these purposes.

9.3 Porters or anyone authorised by Porters may inspect, and may at Porters' sole discretion, service and maintain the Equipment, or otherwise deal with the Equipment in Porters' sole discretion, at any reasonable time.

9.4 Porters or anyone authorised by Porters may enter any place where the Equipment are kept or believed to be kept for any of the purposes set out in clause 9.3. The Customer will provide to Porters access to any such place, and will provide all necessary assistance to obtain the consent of the registered proprietor, landlord, and/or any mortgagee of any land upon which the Equipment are kept or believed to be kept to the entry by Porters for these purposes and will make the Equipment available for such purposes.

## 10. PPSA

10.1 Notwithstanding clause 2.3, if this Agreement creates a Security Interest as that term is defined in the Personal Property Securities Act 1999 ("the PPSA") in the Equipment, then the Customer will, at any time requested by Porters, promptly execute any documents, provide any necessary information and do anything else required by Porters to ensure that the Security Interest constitutes a first ranking Perfected Security Interest (as that term is defined in the PPSA). The Customer will also provide such information that Porters reasonably requires to complete a financing statement or financing change statement (as those terms are defined in the PPSA) to satisfy the legal obligations outstanding as between the parties.

10.2 All costs of and incidental to the registration, amendment or discharge of the Security Interest or financing statement must be paid by the Customer.

10.3 The Customer will promptly notify Porters of any changes to the Customer's details as set out in the Hire Agreement.

10.4 The Customer must not grant to any other person a Security Interest, or consent to any other person creating a Security Interest or registering a financing statement in respect of the Equipment, the proceeds of the Equipment, and all present and after acquired property arising out of or as a result of the Equipment, without the prior written consent of Porters.

10.5 The Customer:

- (a) Acknowledges that where Porters has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by Section 109 of the PPSA;
- (b) Waives any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA;
- (c) Waives its right to receive a copy of the Verification Statement or a Financing Change Statement relating to any Security Interest created by this Agreement.

10.6 If the Equipment that Porters has a Security Interest in is processed, included or dealt with in any way causing it to become accessions, processed or comingled, Porters' Security Interest will continue in the whole in which it is included.

10.7 Until all moneys owed by the Customer to Porters under this Agreement or under any Other Agreement have been paid, and all the Customer's obligations under this Agreement or any Other Agreement satisfied in full, the Customer irrevocably grants Porters and its agent the right to enter into the Customer's property, any property occupied by the Customer or any other property where the Equipment is stored and to take possession of the Equipment. Porters shall not be responsible for any damage caused in the process of taking the Equipment and the Customer will indemnify Porters against liability to any other party should Porters take the Equipment.

## 11. Goods and services tax

11.1 The Customer agrees to pay to Porters any Goods and Services Tax for which Porters may be liable in respect of the Equipment and services supplied by Porters to the Customer under this Agreement and in respect of which a tax invoice has been supplied by Porters.

## 12. Non-assignment

12.1 The Customer may not assign, sub-let or otherwise deal with its rights under this Agreement without the prior consent, in writing, of Porters. A change in the effective management or control of the Customer will be deemed an assignment for the purposes of this clause.

12.2 Porters and its successors or assigns may in its absolute discretion without the consent of or notice to the Customer, assign all or any of its rights or obligations under this Agreement to any other entity or person.

12.3 During the Term, the Customer must, in its dealings with financiers, insurers and other third parties who may have an interest in the Equipment, clearly indicate that the Equipment is the property of Porters.

### 13. Default

13.1 Porters or any person authorised by Porters may enter any place where the Equipment is kept or believed to be kept and retake possession of the Equipment if:

- (a) The Customer fails to pay any amounts due under this Agreement; or
- (b) The Customer commits a breach of any of its other obligations in this Agreement, any security granted, or the terms of any Other Agreement.
- (c) The Customer goes into liquidation or receivership or a resolution to place it in liquidation is passed or proposed or the Customer is unable to pass the solvency test defined by the Companies Act 1993; or
- (d) Execution or distress against the Customer or the assets of the Customer is levied; or
- (e) Any insurance proposal made by the Customer in respect of the Equipment is declined or cancelled; or
- (f) The Customer does or omits to do anything which might endanger the safety or condition of the Equipment; or
- (g) Porters believes the Equipment is "at risk" as defined in the PPSA; or
- (h) The Customer enters into a scheme of arrangement with the Customer's creditors; or
- (i) The Customer has made a material false statement when negotiating this Agreement.
- (j) An event or a series of events (whether related or not) occurs which, in Porters' opinion, may cause a material adverse change in the Customer's ability to meet its obligations to Porters.
- (k) Nothing in this clause will release the Customer from any past, present or future liability under the terms of this Agreement.

13.2 If the Customer is in default Porters may, at its discretion and without prejudice to its other rights and remedies, do any one or more of the following:

- (a) Charge interest at the Default Interest Rate on any late payments calculated on a daily basis from the date payment is due until the date payment is received;
- (b) Charge costs in accordance with clause 17;
- (c) Require the Customer to remedy the default in the manner and within a period notified by Porters;
- (d) Require the Customer to pay to Porters all amounts the Customer owes immediately;
- (e) Terminate this Agreement, or suspend or terminate any other account or agreement the Customer has with Porters or any member of the Porter Group;
- (f) Enforce Security Interests created by this Agreement;
- (g) Exercise any rights that Porters has under this Agreement or that are available at law;
- (h) Enter any place where the Equipment is kept or believed to be kept and retake possession of the Equipment.

### 14. Collateralisation

14.1 This Agreement is interdependent and collateral to any Other Agreement to the end and intent that:

- (a) a default by the Customer under any of the Other Agreements shall constitute a default by the Customer under this Agreement;
- (b) a default by the Customer under this Agreement shall constitute a default by the Customer under the Other Agreements; and
- (c) all rights and powers of Porters or any member of the Porter Group pursuant this Agreement or any Other Agreement (including, without limitation, the right to enforce any security) shall be available to Porters or any member of the Porter Group in respect of any such default by the Customer under this Agreement or any of the Other Agreements.

14.2 The Customer agrees and warrants that the Customer will fully comply with the provisions of the Other Agreements.

14.3 The covenants of the Customer and the Guarantors in this Agreement are given for the benefit of and are enforceable in terms of the Contract and Commercial Law Act 2107 by the Porter Group.

### 15. Notices

15.1 Notices, communication documents or demands required to be made or served pursuant to this Agreement shall be in writing signed by the party giving the notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by post, on the third business day following posting;
- (c) in the case of a communication by facsimile when transmitted with no indication of incomplete transmission to the recipient's last known facsimile number.

15.2 Notices may not be sent by email. Notices, communication, documents or demands shall be given by the Customer at the addresses/numbers set out in the Hire Agreement of this Agreement.

15.3 Without prejudice to any other means of service, notices, communication, documents or demands given by Porters will be deemed to have been made or sent (as appropriate) when delivered by hand, posted by ordinary post or sent by facsimile to the Customer's address or fax number, as the case may be, last known to Porters.

### 16. Exclusions

16.1 No provision, other than those which are mandatory, shall be implied by statute or at common law or otherwise into this Agreement against Porters.

16.2 The Customer agrees the Customer has inspected the Equipment prior to execution of this Agreement and acknowledges that the Equipment is in proper working order and condition.

16.3 The Customer acknowledges it has not been induced to enter into this Agreement by any representation made by or on behalf of Porters and relies solely on its own judgment in accepting the Equipment on hire pursuant to this Agreement.

### 17. Costs

17.1 The Customer must pay Porters' costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of Porters' rights, remedies and powers under this Agreement and any Other Agreement between the Customer and Porters, as well as the costs of and incidental to, the negotiation, preparation, execution and enforcement of any additional security or Other Agreement between the parties.

### 18. Account Application Form

18.1 The Customer has entered into an Account Application Form with Porters. Subject to clause 19.7(c), the terms and conditions of the Account Application Form apply to this Agreement as if the terms and conditions were repeated in full.

18.2 If the Customer has not entered into such an Account Application form, the Customer is, by virtue of this Agreement, deemed to have accepted the terms and conditions of the Account Application Form on the latest terms as at the date of this Agreement and clause 18.1 shall apply.

### 19. Miscellaneous

19.1 Force Majeure: Porters will not be in breach of this Agreement and will not be liable to the Customer or any Guarantor for costs or delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including natural disaster or emergency, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond Porter's control.

19.2 Certificates: A certificate by Porters as to any amounts owing or payable under this Agreement, and any Other Agreement, will (in the absence of manifest error) be conclusive evidence for all purposes including legal proceedings.

19.3 Time of Essence: Unless otherwise stated in this Agreement, time will be of the essence for the performance of any obligations of the Customer or any Guarantor.

19.4 Severance: If any provision of this Agreement is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

19.5 Survivorship: Termination of this Agreement for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the parties as are intended (expressly or impliedly) to survive the termination.

19.6 Waiver: No delay, neglect or forbearance by either party in enforcing against the other party any provision of this Agreement will be a waiver, or in any way prejudice any right, of that party. None of the provisions of this Agreement will be considered to be waived by a party except when such waiver is given in writing and signed by a suitably authorised person for that party. No waiver by a party of any breach shall be deemed a waiver of any continuing or recurring breach unless it is expressly agreed to be so in writing by the parties.

19.7 Entire Agreement:

(a) Subject to clause 18.1, this Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.

(b) This Agreement applies notwithstanding any provision to the contrary expressed or implied in any of the Customer's terms of trade or other documents.

(c) To the extent of any inconsistency between this Agreement and the Account Application Form referred to in clause 18, the terms of this Agreement will prevail.

19.8 Amendment: No modification or alteration to this Agreement is effective unless it is in writing signed by both parties.

19.9 Additional Information: Porters may at any time, whether before or after this Agreement forms a binding agreement between the parties, request such additional information as it considers necessary from the Customer.

19.10 Porters' Other Rights: Nothing in this clause affects any other rights Porters may have at law or in equity as against the Customer. Rights and remedies specified in this Agreement are without prejudice to any other rights or remedies available to Porters.

19.11 Attorney: The Customer irrevocably appoints Porters and its directors jointly and severally as its attorney to do anything which the attorney thinks necessary or desirable to give effect to this Agreement and any Other Agreement. This provision applies before and after any default by the Customer under this Agreement, and permits the signing of all documents and entry into any premises where the Equipment is, or is reasonably assumed by Porters to be.

19.12 Acceptance of terms: if the Customer does not sign this Agreement, the Customer is deemed to have accepted the terms of this Agreement upon delivery of the Equipment in accordance with clause 4.1(a).

## 20. Guarantee

20.1 In consideration of Porters entering into this Agreement at the Guarantors' request, the Guarantors (and if more than one, then the Guarantors jointly and severally) unconditionally and irrevocably:

(a) Guarantee to Porters payment of the total amount owing by the Customer to Porters, and any other costs or losses payable by the Customer to Porters and the performance by the Customer of all of the Customer's obligations, duties, liabilities and the covenants in this Agreement; and

(b) Indemnify Porters against any loss or damage Porters might suffer as a result of the Customer's breach of this Agreement or should this Agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person, or by reason of this Agreement becoming void or unenforceable by Porters.

20.2 The Guarantors covenant with Porters that:

(a) No release delay or other indulgence given by Porters to the Customer or to the Customer's successors or assigns or any other thing whereby the Guarantors would have been released had the Guarantors been merely a surety shall release prejudice or affect the liability of the Guarantors as a guarantor or as an indemnifier.

(b) Although as between the Guarantors and the Customer the Guarantors may be surety only, as between the Guarantors and Porters, the Guarantors may for all purposes be treated as the principal debtor and Porters shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantors.

(c) This guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Fee.

(d) An assignment of this Agreement and any variation to the Fee or any other amount payable under this Agreement in accordance with this Agreement shall not release the Guarantors from liability.

(e) Should there be more than one Guarantor their liability under this guarantee shall be joint and several.

(f) This guarantee shall extend to any retention of the Equipment by the Customer after termination or expiry of this Agreement.

(g) This guarantee is a continuing guarantee and is irrevocable and remains in full force and effect until all the Customer's obligations to Porters under this Agreement have been satisfied

## 21. Additional Security

21.1 The Customer and the Guarantors grant to the Porter Group a general Security Interest in all of the Customer's and the Guarantors' present and after acquired property on the latest Auckland District Law Society General Security Agreement terms as at the date of this Agreement. The provisions of clause 10 will apply to the general Security Interest including for clarity the acknowledgements by the Customer which are also binding upon the Guarantors.

21.2 Without limiting the provisions of this Agreement, the Porter Group may from time to time require the Customer and the Guarantors to provide additional security. The provisions of this clause and clause 10 will apply to such additional security in all respects

21.3 Execution of securities of any nature between the Customer and the Porter Group shall not in any way affect or prejudice Porters' rights whether under this Agreement or otherwise.

21.4 Words in this clause shall, if the context permits, have the meanings given to them by virtue of the PPSA

21.5 In addition to the security set out in this clause, the Customer and the Guarantors each agree that:

(a) The Customer and the Guarantors mortgage all properties in which they have from time to time an interest to the Porter Group. The Customer and the Guarantors will within 5 working days of request by Porters, sign a registerable mortgage in favour of the Porter Group ("Mortgage") to secure repayment of any debts owing by the Customer to the Porter Group, any accrued interest and costs, and any and all future obligations.

(b) The Mortgage will be on a commonly used all obligations form chosen by Porters' solicitors.

(c) Porters or any other member of the Porter Group may, at any time until the Mortgage is registered against the relevant properties, caveat all or any of the properties to protect Porters' or any other member of the Porter Group's interest in the properties pursuant to this clause.

21.6 The Guarantors and the Customer irrevocably appoint Porters and each of its directors (jointly and severally) to be their attorney to sign in their names and on their behalf any security which Porters or any other member of the Porter Group shall request them to execute pursuant to this clause.

## 22. Privacy Act

22.1 Any personal information (as defined in the Privacy Act 2020) received by Porters or the Porter Group relating to the Customer, or their employees and agents, will be held, used and shared by the Porter Group in accordance with the Privacy Act 2020 and the Porter Group Privacy Policy that is located at [www.portergroup.co.nz/privacy-policy](http://www.portergroup.co.nz/privacy-policy), which may be updated by the Porter Group from time to time.

22.2 The Customer authorises the Porters and the Porter Group to provide the Customer, and its employees and agents, with information about Porters and the Porter Group's products and services, including commercial electronic messages. Any person may opt out of receiving commercial electronic messages by notifying the Porter Group at the address set out in clause 22.4 below or using an unsubscribe facility included in any such commercial electronic message.

22.3 Porters and the Porter Group acknowledge that the person that any personal information is held in respect of has the right to access and correction of such personal information. An access or correction request can be made by contacting the Porters or the Porter Group at the address set out in clause 22.4 below.

22.4 If the Customer, or their employees or agents, have any questions regarding privacy at Porters or the Porter Group, they may contact the Porter Group Privacy Officer at [privacy@porterce.com](mailto:privacy@porterce.com).