

STMSNZ LIMITED – TERMS & CONDITIONS

1. **Definitions.** For the purposes of these Terms and Conditions (the "Conditions"), the following words have the following meanings:

"Contract" means these terms and conditions, together with STMSNZ order form(s), all operating instructions and handbook(s) relating to Equipment hired and any application(s) for credit and guarantees relating to Customer.

"Customer" means the person procuring Services or hiring Equipment from STMSNZ, including its agents, employees, representatives, successors and assigns.

"Damage Waiver" has the meaning set out in clause 7.

"Equipment" means all equipment, vehicles and materials provided by STMSNZ.

"Services" means all services provided by STMSNZ, including labour hire, training and advice.

"Site" means any location at which Customer receives Services or uses Equipment.

"STMSNZ" means STMSNZ Limited.
2. **Agreement.**
- 2.1. Customer accepts the supply of Services and agrees to hire the Equipment from STMSNZ in accordance with the Contract.
- 2.2. The Contract shall govern the relationship between STMSNZ and Customer to the exclusion of any pre-existing terms and conditions supplied by STMSNZ and any terms and conditions put forward by or on behalf of Customer.
- 2.3. Where STMSNZ gives a quotation for Services or Equipment, the quotation shall be GST exclusive and valid for no more than 14 days from the date of issue.
3. **Hire Periods.**
- 3.1. Equipment may be hired for: (a) Half Day, (b) Daily, (c) Weekend, (d) Week, or (e) such other period as is agreed in writing. The applicable hire period is set out in the Contract.
- 3.2. STMSNZ may charge extra on a pro rata basis if Customer exceeds the maximum hire duration or usage times set out above, in addition to STMSNZ's other rights under the Contract. Minimum hiring periods may apply. Customer shall not be entitled to a refund or reduced hire charge if Customer returns the Equipment to STMSNZ before the end of the agreed hire period.
- 3.3. The hire period begins from the time the Equipment leaves the place of hire and runs until all Equipment is returned to STMSNZ at the place of hire or the Contract is terminated by STMSNZ pursuant to clause 9.
4. **Charges and Payment.**
- 4.1. Customer shall pay STMSNZ its charges for all Services provided, Equipment hired and all other applicable charges including transportation, delivery and removal, excess hire or use, damage to or loss of Equipment, cleaning costs, Damage Waiver excess, collection and legal costs and default interest for late payment. All charges are exclusive of GST unless otherwise indicated. GST will be charged in addition at the prevailing rate.
- 4.2. Where a charge is not expressly stated in the Contract, STMSNZ's prevailing standard charges will apply. STMSNZ reserves the right to revise its charges without notice.
- 4.3. Returned equipment is expected to be clean. Cleaning costs will be assessed and charged if Customer returns Equipment that STMSNZ deems to be excessively dirty.
- 4.4. Customer will be either a "Cash Customer" or, if STMSNZ in its absolute discretion permits, a "Charge Account Customer".
- 4.5. A Cash Customer must pay a deposit prior to hire of not less than STMSNZ's estimate of the total charge. On return of the Equipment, STMSNZ will calculate the actual total charges and Customer will either pay or be refunded the difference between the deposit paid and the actual total charges, as applicable.
- 4.6. For Charge Account Customers, STMSNZ will send Customer an invoice for charges accrued. The Charge Account Customer must pay the invoice in full by the 20th of the month following the date of invoice. Discounts available to Charge Account Customers are only claimable if the account is paid by the 20th of the month following the date of invoice. No further credit will be extended to Customer if any invoice falls overdue. STMSNZ reserves the right to apply payments received against the oldest invoices outstanding from Customer.
- 4.7. Without prejudice to STMSNZ's rights under the Contract, at law or otherwise, Customer will pay default interest at the rate of 2.5% per calendar month on all outstanding amounts from the end of the agreed hire period (for Cash Customers) or from the 20th of the month following the date of invoice (for Charge Account Customers) until all monies have been paid in full.
- 4.8. Customer shall not in any circumstances or for any reason whatsoever make any deduction or withhold any sum from the charges payable to STMSNZ by way of set-off. If STMSNZ must take action to recover any unpaid amount, Customer shall reimburse all collection and legal costs associated with such action calculated on a solicitor and own client basis.
5. **Customer's Obligations.**
- 5.1. Customer shall:
 - (a) Take proper and reasonable care of the Equipment and return it (to the place of hire, unless otherwise specified in the Contract) in good order and condition;
 - (b) Carry out all necessary servicing, (including by way of example the supply of all necessary tyre pressures, oils, grease and fuel) at Customer's own expense;
 - (c) Satisfy themselves that the Equipment is suitable for the intended use;
 - (d) Use the Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment;
 - (e) Immediately notify STMSNZ by telephone if the Equipment breaks or is damaged;
 - (f) Ensure that a safe working environment exists for all employees and contractors of Customer, STMSNZ and third parties in connection with the Equipment;
 - (g) Ensure any site on which Equipment is used does not conflict with legal obligations, the directions of STMSNZ or would otherwise breach this Contract or cause any risk to persons or property.
- 5.2. Customer warrants that all persons who use the Equipment shall: (i) be competent, qualified and authorised to use the Equipment, (ii) use the equipment in the manner it was designed to be used, (iii) follow any directions from STMSNZ, local authorities, codes of practice or from the manufacturer of the Equipment relating to the use and safety of the Equipment, and (iv) comply with all obligations in relation to the use and control of the Equipment, including the Health and Safety in Employment Act 2015 and all other relevant legislation.
6. **Customer's Liability.**
- 6.1. This clause 6 shall be read subject to Customer's entitlement to the Damage Waiver under clause 7.
- 6.2. Customer is responsible for loss or damage to or theft of the Equipment from the time the Equipment leaves the place of hire until it is returned to STMSNZ at the place of hire. Customer shall notify STMSNZ in writing immediately if the Equipment lost, damaged or stolen and shall follow all reasonable instructions of STMSNZ.
- 6.3. In the case of damage to the Equipment however caused, Customer shall be responsible for and shall indemnify STMSNZ for the full cost of all repairs to restore the Equipment to the condition it was in, as determined by STMSNZ, at the time of hire.
- 6.4. In the case of theft, loss or irreparable damage to the Equipment however caused, Customer shall indemnify STMSNZ for the greater of the full cost to STMSNZ of replacing the Equipment or the management book value of the Equipment.
- 6.5. In addition to the costs set out in clauses 6.3 and 6.4, Customer shall be responsible for and shall indemnify STMSNZ for any loss of revenue suffered by STMSNZ due to the unavailability of the Equipment due to theft, loss or damage. The indemnity under this clause shall not exceed STMSNZ's prevailing charges for 26 x 1 Week hires of the applicable Equipment.
7. **Damage Waiver.**
- 7.1. Subject to the exclusions set out in clause 7.2 and payment of the excess under clause 7.3, STMSNZ will waive Customer's liability under clause 6 for accidental loss or damage to Equipment PROVIDED THAT: (i) Customer has at all times acted reasonably and in accordance with the Contract, (ii) any theft was from secure premises, and (iii) in the case of theft, Customer immediately notified the Police (taking the name of the Police contact) and STMSNZ.
- 7.2. Customer acknowledges that the Damage Waiver will not cover damage, injury or loss:
 - (a) That is uninsured by STMSNZ, or subject to an exclusion or limitation or rejected claim under its policies of insurance.
 - (b) That is attributable to: (i) loss of the equipment other than as a result of theft from a secure premise, (ii) negligent acts or omissions of Customer, (iii) earthquake or war damage, (iv) punctures and damage to tyres, panels, cabin windows or glass, (v) malicious damage caused by third parties, (vi) any incident or accident involving water.
 - (c) In the case of vehicles, where: (i) the driver/operator is under the influence of alcohol or any drug which affects his or her ability to operate the vehicle; (ii) the vehicle is in an unsafe or unroadworthy condition that arose during the hire period that caused or contributed to the loss or damage and the driver/operator was aware or ought to have been aware of the unsafe or unroadworthy condition of the vehicle; (iii) the vehicle is operated in any speed test, race or contest; (iv) the vehicle is driven/operated by any person who at the time of driving/operating the vehicle does not have the appropriate licence, or is disqualified from holding a licence; (v) the vehicle is driven/operated outside the hire period or any agreed extension of the term; or (vi) the vehicle is operated in breach of clause 11.
 - (d) To property or personal belongings of Customer or any third party.
- 7.3. The Damage Waiver is subject to an excess charge of \$2,500 plus GST for each item of motorized Equipment and \$1,000 plus GST for each item of other Equipment.
8. **STMSNZ's Liability.**
- 8.1. To the fullest extent permitted by law:
 - (a) STMSNZ shall not be liable for any loss or damage of any kind whatsoever whether suffered or incurred by Customer or another person and whether in contract, or tort or otherwise and whether such loss or damage arises directly or indirectly from Equipment or Services provided by STMSNZ unless such loss or damage arises directly from the negligence or willful default of STMSNZ.
 - (b) STMSNZ shall not in any circumstances be liable for any indirect or consequential loss or damage (including, without limitation, loss of profits or revenue) incurred by Customer or any other person, notwithstanding sub-clause (a).
 - (c) STMSNZ shall not be liable, whether in contract, tort (including negligence) or otherwise to Customer or any other person (including insurers) for any amount in excess of three times the hire charges actually paid by Customer under the Contract, notwithstanding sub-clause (a).
 - (d) Customer shall indemnify STMSNZ against all claims and loss of any kind, however caused or arising, brought by any other person in connection with any matter, act, omission or error relating to the Equipment, Services or Contract.
 - (e) Any condition or warranty (statutory, express or implied) that would otherwise be implied in this Contract is excluded to the maximum extent permitted by law.

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- (f) STMSNZ will not be liable for any loss or damage of any kind whatsoever arising from any Equipment or Services not arriving on time or from deficiencies in the performance or reliability of any Equipment.
- (g) Customer shall use all Equipment, including slings and ancillary equipment supplied, at Customer's sole risk.
- 8.2. Without limiting the other provisions of this clause 8 and to the fullest extent permitted by law, STMSNZ accepts no responsibility for:
- (a) Loss or damage to goods being handled by the Equipment or damaged by the Equipment however caused.
- (b) The incorrect use of slings or lifting equipment or for the method of slinging.
- (c) Loss or damage which may be caused to underground and overhead services, footpaths, driveways, grounds, lawns, fences, structures, vehicles or any other property whatsoever caused by Customer or the Equipment;
- (d) Loss or damage arising out of any stoppage or delay occasioned by a cause beyond STMSNZ's control including, but not limited to, weather conditions, ground conditions, strikes and industrial disputes.
- 8.3. If Customer is acquiring or hiring the Services or Equipment for the purposes of a business, Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply.
- 8.4. The provisions of this clause 8 shall: (i) apply to the fullest extent allowed by law, and (ii) survive the expiration, cancellation, or termination of this Contract.
9. **STMSNZ's Right to Cancel.**
- 9.1. STMSNZ may terminate the Contract by notice with immediate effect if STMSNZ reasonably believes that Customer is unable to, or might be unable to, comply with the Contract or pay any charges or that the Equipment is at risk for any reason whatsoever including the manner of its use by Customer or adverse weather or work conditions.
- 9.2. STMSNZ may terminate the Contract by notice with immediate effect if any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or other like person of the whole or any part of Customer's assets or business.
- 9.3. Customer grants STMSNZ, or will procure that STMSNZ is granted, an irrevocable right and authority to enter at any time onto any place where the Equipment is situated or thought to be situated to remove the Equipment whenever the Contract has expired or is terminated.
- 9.4. Customer indemnifies STMSNZ against any cost, claim, damage, expense or liability suffered or incurred by STMSNZ whether arising directly or indirectly from STMSNZ exercising its rights under this clause or otherwise acting to recover any Equipment hired or monies payable by Customer pursuant to the Contract.
- 9.5. STMSNZ will not be liable to Customer or any other person for any loss suffered or liability incurred arising from termination of the Contract or repossession of the Equipment.
- 9.6. Cancellation of the Contract by STMSNZ is without prejudice to any rights that STMSNZ may have under this Contract or otherwise at law.
10. **Personal Property Securities Act 1999 ("PPSA").**
- 10.1. Customer acknowledges that title to the Equipment remains with STMSNZ at all times.
- 10.2. Hire of Equipment may create a security interest in the Equipment. If so, the provisions of this clause 10 apply. All terms in this clause 10 have the meaning given in the PPSA and section references are references to sections of the PPSA.
- 10.3. On the request of STMSNZ, Customer shall promptly execute any documents, provide all necessary information and do anything else required by STMSNZ to ensure that the security interest created under the Contract (including these Conditions) constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 10.4. Customer will pay to STMSNZ all fees and expenses incurred by STMSNZ in relation to the filing of a financing statement in connection with the Contract.
- 10.5. Customer waives its rights under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 & 148 of the PPSA.
11. **Vehicles.**
- 11.1. If any Equipment being hired is a vehicle, then notwithstanding any other provision in the Contract including these Conditions, Customer shall:
- (a) Ensure that the vehicle is driven during the period of hire only by Customer and persons named on the Contract and only if they hold a current full driver's licence appropriate for the vehicle at the time when they are driving the vehicle
- (b) As soon as possible, where the vehicle is damaged or requires repair or salvage, whether because of an accident or breakdown, advise STMSNZ of the full circumstances by telephone.
- (c) Not arrange or undertake any repairs or salvage (excluding servicing under clause 5.1(b) without the authority of STMSNZ except to the extent that the repairs or salvage are necessary to prevent further damage to the vehicle or to other property.
- (d) Ensure that no person shall interfere with the hour recorder or, except in any emergency, any part of the engine, transmission, braking or suspension systems of the vehicle.
- (e) Not use or permit the vehicle to be used for the carriage of passengers for hire or reward unless the vehicle is hired with the knowledge of STMSNZ for use in a passenger service licensed under Part 4A of the Land Transport Act 1998.
- (f) Not sublet or hire the vehicle to any other person.
- (g) Not permit the vehicle to be operated outside Customer's authority.
- (h) Not operate the vehicle or permit it to be operated, in circumstances that constitute an offence by the driver against any of sections 56, 57 and 58 of the Land Transport Act 1998 (which relates to driving under the influence of drink or drugs).
- (i) Not operate the vehicle or permit it to be operated in any race, speed test, rally or contest.
- (j) Not operate the vehicle or permit it to be operated in breach of the Transport Act 1962, the Land Transport Act 1998, the Traffic Regulations 1976 or any other Act, regulations, rules or bylaws relating to road traffic.
- (k) Not operate the vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the vehicle.
- (l) Be responsible for all penalties relating to traffic offences incurred during the hire period, including without limitation, speeding, parking, toll and traffic signal offences. STMSNZ shall forward a copy of any relevant infringement notices it receives, along with the copy of the Contract (including these conditions) to Customer as soon as practicable and advise Customer that if STMSNZ receives a reminder notice of the infringement, it will deduct payment from Customer's credit card or account. If STMSNZ receives a relevant reminder notice without having received an infringement notice, it will forward a copy of the reminder notice, along with the copy of the Contract (including these conditions) to Customer as soon as practicable and advise Customer that STMSNZ will deduct payment from Customer's credit card or account. Customer acknowledges that an administration fee will be applied by STMSNZ to Customer to process these infringements and deduct payment from Customer's credit card or account. Customer acknowledges the right to challenge, complain about, query or object to the alleged offence to the authority issuing the infringement notice and to seek a court hearing within 56 days of the date of any infringement notice and 28 days from the issue of any reminder notice.
- (m) Ensure that a copy of the Contract (including these Conditions) is kept within the vehicle throughout the hire period and produced without delay for inspection upon demand by an enforcement officer.
12. **Privacy Act 1993.**
- 12.1. STMSNZ may collect personal information about Customer. The information is principally collected to inform STMSNZ's entry into and operation of the Contract. The information is collected and held by STMSNZ. If Customer is an individual, Customer has rights of access to personal information contained in the Contract, subject to the provisions of the Privacy Act 1993.
- 12.2. Customer and each individual who signs STMSNZ's application for credit authorizes STMSNZ:
- (a) To collect, retain and use information about Customer or such other signatory for the purpose of assessing Customer's or such other signatory's creditworthiness;
- (b) To disclose information about Customer or such other signatory: (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to Customer's obligations to STMSNZ; (ii) to such persons as may be necessary or desirable to enable STMSNZ to exercise any power, enforcement or attempted enforcement of STMSNZ's rights, remedies and powers under the Contract including these Conditions.
13. Assignment. The Contract is personal to Customer and is not capable of assignment whether in whole or in part by Customer. Customer shall not part with possession of the Equipment or on-hire, sublet, sell, alienate or grant a security interest in the Equipment to any person in any circumstances. This clause shall not prevent employees of Customer from using the Equipment in conformity with the Contract.
14. **Governing Law.** The laws of New Zealand shall govern the Contract and the Courts of New Zealand shall have exclusive jurisdiction and venue over all disputes.
15. **Miscellaneous.** No provision of the Contract may be waived, deleted or modified in any manner, except pursuant to a written agreement between the parties. All provisions of the Contract that by their nature generally would be construed as surviving the termination of the Contract, shall survive the expiration, cancellation or termination of the Contract. Any use of the word "includes" or "including" shall be illustrative and shall not limit the sense of the words preceding those words. If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the legal validity and enforceability of the rest of the Contract shall not be affected and the provision (or part thereof) shall apply with the minimum modification necessary to make it legal, valid and enforceable. Reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to "STMSNZ" includes its employees, contractors and agents. STMSNZ reserves the right to change the terms of the Contract, including these Conditions, without notice. Any amended terms of the Contract will be placed on STMSNZ's website (www.stmsnz.co.nz) and shall apply from the date that such amended terms are placed on the website unless another date is expressly stated. A reference to the hire of Equipment in this Contract shall also be interpreted as a reference to the supply of Equipment and an operator by STMSNZ to Customer, if the context requires.
16. **Cancellation.** Cancellations received AFTER 5pm the day before a booked job will be charged a minimum fee of \$100+GST. Cancellations received AFTER staff and equipment have left the depot will be charged a minimum fee of \$150+GST. Communication of such cancellation to be provided verbally and in writing to a STMSNZ representative. Cancellation fees will be charged by STMSNZ at its sole discretion.