

GENERAL TERMS

1. **Definitions:** In this Agreement:
 - Agreement means the General Terms and the Specific Terms
 - Depot means Pace Power & Air's Depot at 95 Katere Road, New Plymouth
 - Equipment means the equipment hired by Pace to the Hirer and includes all instructions, manuals and documents in any format, provided to the Hirer with the equipment
 - General Terms means these general terms
 - GST means goods and services tax payable under the Goods and Services Tax Act 1985, as amended from time to time, and includes any Act passed in substitution for that Act
 - Hire means any hire of Equipment from Pace by a Hirer
 - Hirer includes the Hirer's employees, agents, contractors (including a Re-Hirer if the Hirer is permitted to re-hire the Equipment) and assigns
 - Hire Charges means the charges payable for the hire of the Equipment as set out in the Specific Terms, including any additional charges
 - Hire End Time means the time a Hire ends, which is when the Hirer finishes unloading the Equipment at the Depot on return, or, if Pace collects the Equipment from another place, the time when the Hirer finishes loading the Equipment for re-delivery at that other place, or when Pace otherwise takes possession of the Equipment
 - Hire Period means the hire period beginning at the Hire Start Time and ending at the Hire End Time
 - Hire Start Time means the time a Hire starts, which is when the Equipment is delivered to the Hirer at the Depot to be loaded, or if Pace delivers the Equipment to another place, the time when the Hirer begins to unload the Equipment at that other place
 - Pace means Pace Power & Air Limited and includes, where relevant, its employees, contractors and agents
 - PPSA means the Personal Property Securities Act 1999, as amended from time to time, and includes any Act passed in substitution for that Act
 - Re-Hirer means a person who re-hires the Equipment from the Hirer
 - Specific Terms means the specific terms of Hire, as set out in the Term Sheet
2. **Hire:**
 - a. Pace hires the Equipment to the Hirer on the terms of this Agreement.
 - b. If the Specific Terms provide, the Hirer may re-hire the Equipment to a Re-Hirer on its ordinary hire terms. The Hirer will use reasonable care in making decisions about who the Equipment should be re-hired to. Notwithstanding Pace's consent to any re-hire of any Equipment, the Hirer will remain bound by this Agreement and must ensure that any Re-Hirer complies with all relevant provisions of it.
3. **Delivery and Return of the Equipment:**
 - a. If the Specific Terms provide, or if the Hirer otherwise requests, Pace will deliver the Equipment to and/or collect the Equipment from a place other than the Depot. Any such delivery or collection will be at the Hirer's cost and in addition to the Hire Charges.
 - b. The Hirer will be responsible for loading and unloading the Equipment at the Depot, or, if Pace delivers the Equipment to another place, at that other place.
4. **Hire Period:**
 - a. If a Hire End Time is specified in the Specific Terms, the Hirer must return the Equipment to Pace by the Hire End Time, whether at the Depot, or if the Specific Terms provide that Pace is to collect the Equipment from another place, by making the Equipment available for collection by Pace at that other place.
 - b. If no Hire End Time is specified in the Specific Terms, Pace may terminate this Agreement after giving ten working days' notice to the Hirer and the Hirer must return the Equipment to Pace, or make the Equipment available for collection by Pace within that time.
5. **Hire Charges:**
 - a. The Hirer will pay to Pace the Hire Charges, plus GST, together with all other charges and amounts payable under this Agreement. The Hirer must also pay any costs incurred by Pace in recovering any monies owing under this Agreement.
 - b. The Hire Charges will be determined based on the length of the Hire Period. If Pace specifies a minimum Hire Period, the minimum Hire Charges will be based on that minimum Hire Period.
 - c. The Hirer will pay all fuel and other costs necessary to operate the Equipment, and any fines or penalties arising out of the Hirer's use of the Equipment.
 - d. If the Hire Period is for a period longer than one year, at each anniversary of the Hire Start Date during the Hire Period, Pace may increase the Hire Charges and the Hirer will pay those increased Hire Charges.
6. **Payment:**
 - a. If the Specific Terms provide that payment is on account:
 - i. the Hirer will pay all amounts owing to Pace, without any set-off, on the 20th day of the month after the date of the invoice from Pace;
 - ii. if the Hirer disputes any amount in an invoice, it must pay any undisputed amount and the dispute must be dealt with under clause 13(d); and
 - iii. the Hirer must pay default interest at 10% per annum, calculated daily and compounded monthly, on any amounts outstanding after the due date for payment specified in clause 6(a).
 - b. If payment is in advance, the Hirer will pay all amounts owing to Pace, without any set-off before the Hirer takes delivery of the Equipment. If the actual Hire Period is different from the estimated Hire Period, any balance owing resulting from over or underpayment of Hire Charges will be paid by the owing party to the other party on the return of the Equipment to Pace. If the Hire Period extends beyond one month, Pace may send the Hirer an invoice and the Hirer must pay that invoice in accordance with the provisions of clause 6(a).
7. **Hirer's Obligations:**
 - a. The Hirer must ensure that:
 - i. the Equipment is used only for its intended purpose and in accordance with the law and with Pace's and any manufacturer's instructions supplied to the Hirer;
 - ii. every person using or operating the Equipment is competent and qualified to do so;
 - iii. if the Hirer becomes aware that the Equipment is not operating properly, use of the Equipment stops and Pace is immediately informed of the defect;
 - iv. reasonable care is taken of the Equipment and that the Equipment is returned to Pace in the same condition as it was at the Hire Start Time, except for reasonable wear and tear;
 - v. the Equipment is returned to Pace clean. If the Equipment is not returned reasonably clean, the Hirer must pay to Pace any reasonable cleaning fee charged by Pace;
 - vi. the Equipment is not repaired or adjusted, except as part of its ordinary use, without Pace's prior consent;
 - vii. if the Equipment requires any regular maintenance or servicing while on Hire, the Equipment is made available to Pace at any reasonable time after being given ten working days' notice, for such maintenance or repair. Provided that the Equipment has been used in accordance with this clause 7, any such regular maintenance or repair will be at Pace's costs;
 - viii. the Equipment is not represented as belonging to any person other than Pace, and that the Equipment is not charged or used as security in any way by any person other than Pace; and
 - ix. the Equipment remains on mainland New Zealand at all times and that Pace is informed of the location of the Equipment.
 - b. The Hirer must allow Pace access to the location where the Equipment is, at any reasonable time, for Pace to inspect the Equipment, or to collect it, in accordance with the provisions of this Agreement.
8. **Warranty:**
 - a. Pace warrants that the Equipment has all current certifications and warrants of fitness required by law and that, to the best of its knowledge, the Equipment is in sound mechanical order.
 - b. Provided that the Hirer has complied with its obligations under clause 7, if the Equipment breaks down, or becomes defective:
 - i. Pace will, at its sole discretion, repair or replace the Equipment at its cost, or terminate the Hire from the time the break-down occurred, or defect became apparent; and
 - ii. the Hirer will not be liable to pay Hire Charges during the period when the Equipment is broken down or unable to be used due to the defect.
 - c. If Pace terminates the Hire under clause 8(b), Pace will have no liability to the Hirer relating to the break-down, defect, or termination of the Hire or this Agreement.
 - d. Pace expressly excludes all other warranties as to quality, fitness for purpose, condition, description, assembly, manufacture, design or performance to the maximum extent allowed by law. In particular, if the Hirer hires the Equipment for business purposes, the guarantees in the Consumer Guarantees Act 1993 are excluded.
9. **Risk, Liability and Insurance:**
 - a. Subject to clause 9(b), the Equipment will be at the Hirer's risk for the duration of the Hire Period and the Hirer will indemnify Pace for any losses or costs that Pace incurs arising out of damage to, theft or loss of the Equipment. Such losses or costs may include the costs of repairing or replacing the Equipment and any loss of revenue arising from Pace's inability to hire the Equipment.
 - b. Provided that the Hirer has complied with its obligations under clause 7, the Hirer will not be liable for losses or damage to the Equipment due to fair wear and tear or inherent defects in the Equipment.
 - c. To the maximum extent allowable by law, Pace will have no liability to the Hirer for any direct or indirect losses of any kind whatsoever (including loss of profit) arising out of, or relating to this Agreement or the Equipment.
 - d. The Hirer will indemnify Pace and hold Pace harmless against any claim against Pace by any third party (including a Re-Hirer) for any costs, claims or losses of any kind whatsoever arising out of, or relating to this Agreement, or the Equipment.
 - e. Irrespective of any other provision of this Agreement, Pace's liability to the Hirer will be limited to the amount of the Hire Charges.
10. **Insurance:**
 - a. If the Specific Terms provide that the Hirer will insure the Equipment, the Hirer must:
 - i. insure the Equipment against loss or damage for its full replacement value;
 - ii. insure itself, its property, third parties and third party property against loss or damage arising from, or relating to, the Equipment or the use of the Equipment; and
 - iii. provide evidence of such insurance policies to Pace.
 - b. Unless the Specific Terms provide that the Hirer will insure the Equipment, Pace will insure the Equipment and the insurance premium will be included in the Hire Charges. Subject to the exclusions listed in clause 10(c), and the Hirer paying any excess in respect of each and every incident, the Hirer will be:
 - i. indemnified against any liability to Pace relating to loss of, or damage to the Equipment and any loss of revenue or other expenses associated with the loss of, or damage to the Equipment; and
 - ii. indemnified against any liability the Hirer might have for damage to any property of any third party arising out of the Hirer's use of the Equipment.
 - c. Pace's insurance will not apply, and the Hirer will not be indemnified under clause 10(b), if any of the exclusions in Pace's insurance policies apply, including if:
 - i. the Equipment is used by a user under the influence of alcohol or drugs;
 - ii. the Equipment is used outside the terms of this Agreement; or
 - iii. the Equipment is damaged as a result of wilful or reckless behaviour of the Hirer (including, for the avoidance of doubt, its employees, contractors and agents and any Re-Hirer).
 - d. The Hirer will:
 - i. at Pace's request, provide Pace with all assistance necessary to enable Pace to make a claim under any of its insurances;
 - ii. if the Hirer is insuring, act expeditiously to make a claim on its insurances in respect of any loss or damage to the Equipment; and
 - iii. regardless of whether Pace, or the Hirer is insuring the Equipment, immediately notify Pace of any loss or damage to the Equipment, or loss or damage arising in relation to the Equipment.
11. **Default:**
 - a. Pace may cancel this Agreement, and demand immediate return of the Equipment or take immediate possession of the Equipment if:
 - i. the Hirer breaches any term of this Agreement;
 - ii. the Equipment is damaged in any way;
 - iii. Pace considers that the Equipment is at risk, in any way; or
 - iv. the Hirer goes into liquidation, receivership, bankruptcy or is otherwise insolvent.
 - b. The cancellation of this Agreement will be without prejudice to Pace's rights and the Hirer's obligations under this Agreement. Clauses 5, 6, 7, 9, 10 and 13 will survive the termination of this Agreement.
12. **PPSA:**
 - a. The Hirer acknowledges that the Equipment remains the property of Pace at all times and that this Agreement may create a security interest in terms of the PPSA. In this clause, all terms defined in the PPSA have the meaning given to them in the PPSA.
 - b. At Pace's request, the Hirer will do everything necessary, including executing all documents and providing all information, to enable Pace to perfect its security interest in the Equipment created by this Agreement, including by filing a financing statement on the Personal Property Securities Register.
 - c. The Hirer will pay to Pace all fees and expenses that Pace incurs in exercising its rights under this clause.
 - d. The Hirer waives its rights under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131-34 and 148 of the PPSA.
13. **General:**
 - a. The Hirer will not assign this Agreement without Pace's prior consent.
 - b. This Agreement contains the entire agreement and understanding between the parties and supersedes all prior agreements and understandings.
 - c. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect and the parties will do everything necessary to ensure that the intent of this Agreement is carried out as far as is reasonable possible.
 - d. The parties will act in good faith to resolve any disputes arising under this Agreement. If the parties are unable to resolve any dispute themselves, they will refer the dispute to mediation before a mediator appointed by the President of the New Zealand Law Society before taking any further action.