



CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:				Postcode:
Billing Address:				Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:			Date Incorp. <i>(current owners):</i>	
Nature of Business:				
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom):</i>				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:				D.O.B.:
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:				D.O.B.:
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="checkbox"/> 20 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO			Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of HMS Solutions Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED (CLIENT): _____ **SIGNED (HMS):** _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

HMS Solutions Limited – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "HMS" means HMS Solutions Limited, its successors and assigns or any person acting on behalf of and with the authority of HMS Solutions Limited.</p> <p>1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client it is a reference to each Client jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by HMS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.4 "Equipment" means all Equipment including any accessories supplied on hire by HMS to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoice, quotation, authority to hire, or any other work authorisation form provided by HMS to the Client.</p> <p>1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoice, quotation, authority to hire, or any other forms as provided by HMS to the Client.</p> <p>1.6 "Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods/Equipment hire as agreed between HMS and the Client in accordance with clause 5 below.</p>	<p>receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HMS is sufficient evidence of HMS rights to receive the insurance proceeds without need for any person dealing with HMS to make further enquiries.</p> <p>7.3 If the Client requests HMS to leave Goods outside HMS' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.</p> <p>7.4 If HMS has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.</p> <p>7.5 The Client acknowledges and agrees that HMS shall be entitled to:</p> <p>(a) retain any components replaced during the provision of the Services; and</p> <p>(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.</p> <p>7.6 The Client acknowledges that HMS is only responsible for parts/Goods that are replaced/repaired by HMS, and in the event that other components subsequently fail, the Client agrees to indemnify HMS against any loss or damage to the Goods/parts, or the Client's machine, caused by the components, or any part thereof howsoever arising.</p> <p>7.7 HMS shall not be liable for the loss of or damage to the Client's vehicle or any other vehicle or vehicle being repaired or operated in connection with the authorised Services (including in the event of a call-out; it shall be the Client's responsibility to remain with the machine to ensure security of the same), unless caused by the negligence of HMS, or HMS' employees.</p> <p>7.8 The Client agrees to indemnify HMS against any loss or damage to the Client's machine insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other risks) whilst stored at HMS premises. The machine is at all times stored and repaired at the Client's sole risk.</p>	<p>14. Warranty</p> <p>14.1 For Goods not manufactured by HMS, the warranty shall be the content warranty provided by the manufacturer of the Goods. HMS shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>15. Intellectual Property</p> <p>15.1 Where HMS has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of HMS.</p> <p>15.2 The Client warrants that all designs, specifications or instructions given to HMS will not cause HMS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HMS against any action taken by a third party against HMS in respect of any such infringement.</p> <p>15.3 The Client agrees that HMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which HMS has created for the Client.</p>	<p>by the Client from HMS' premises and will continue until the return of the Equipment to HMS' premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>21.2 If HMS agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves HMS' premises and continue until the Client notifies HMS that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>21.3 The Client upon which the Client advises of termination shall in all cases be treated as a full day's hire.</p> <p>21.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless HMS confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies HMS immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.</p>
<p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and HMS.</p> <p>2.3 The Client acknowledges that any advice, recommendation, information, assistance or service provided by HMS in relation to Goods or Services supplied is given in good faith, is based on HMS' own knowledge and experience and shall be accepted without liability on the part of HMS and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.</p> <p>2.4 In the event that HMS is required to provide the Services urgently, that may require HMS staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or public holidays) then HMS reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between HMS and the Client.</p> <p>2.5 In the event that the Goods and/or Services provided by HMS are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any claim payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by HMS and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.</p>	<p>7.7 HMS shall not be liable for the loss of or damage to the Client's vehicle or any other vehicle or vehicle being repaired or operated in connection with the authorised Services (including in the event of a call-out; it shall be the Client's responsibility to remain with the machine to ensure security of the same), unless caused by the negligence of HMS, or HMS' employees.</p> <p>7.8 The Client agrees to indemnify HMS against any loss or damage to the Client's machine insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other risks) whilst stored at HMS premises. The machine is at all times stored and repaired at the Client's sole risk.</p> <p>8. Title to Goods</p> <p>8.1 HMS and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid HMS all amounts owing to HMS; and</p> <p>(b) the Client has met all of its other obligations to HMS.</p> <p>8.2 Receipt of HMS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>8.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Client in accordance with clause 8.1, HMS shall remain the owner of the Goods and must return the Goods to HMS on request.</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for HMS and must pay to HMS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of such sale on trust for HMS and must pay or deliver the proceeds to HMS on demand.</p> <p>(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of HMS and must sell, dispose of or return the resulting product to HMS as it so directs.</p> <p>(e) the Client irrevocably authorises HMS to enter any premises where HMS believes the Goods are kept and recover possession of the Goods.</p> <p>(f) HMS shall have possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HMS.</p> <p>(h) HMS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p>	<p>16. Default and Consequences of Default</p> <p>16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HMS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>16.2 If the Client owes HMS any money the Client shall indemnify HMS and agree to pay to HMS any amount incurred by HMS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HMS' collection agency costs, and bank dishonour fees).</p> <p>16.3 Further to any other rights or remedies HMS may have under this contract, if a Client has made payment to HMS by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HMS under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.</p> <p>16.4 Without prejudice to any other rights or remedies HMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HMS may suspend or terminate the supply of Goods/Equipment to the Client. HMS will not be liable to the Client for any loss or damage the Client suffers because HMS has exercised its rights under this clause.</p> <p>16.5 Without prejudice to HMS' other remedies at law HMS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HMS shall, whether or not payment has been made, become immediately payable if:</p> <p>(a) any money payable to HMS becomes overdue, or in HMS' opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p>	<p>22. Risk to Equipment</p> <p>HMS retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.</p> <p>22.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies HMS for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.</p> <p>22.3 The Client will insure, or self-insure, HMS' interest in the Equipment against physical loss or damage including, but not limited to, theft, burglary, fire, and other risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>22.4 The Client accepts full responsibility for and shall keep HMS indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.</p> <p>23. Title to Equipment</p> <p>23.1 The Equipment is and will at all times remain the absolute property of HMS.</p> <p>23.2 If the Client fails to return the Equipment to HMS then HMS or HMS' agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>23.3 The Client is not authorised to pledge HMS' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p>
<p>3. Electronic Transactions Act 2002</p> <p>3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>4. Change in Control</p> <p>4.1 The Client shall give HMS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by HMS as a result of the Client's failure to comply with this clause.</p>	<p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HMS.</p> <p>(h) HMS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>17. Cancellation</p> <p>17.1 HMS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice HMS shall repay to the Client any money paid by the Client for the Goods/Equipment. HMS shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>17.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by HMS as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	<p>18. Privacy Act 1993</p> <p>18.1 The Client authorises HMS or HMS' agent to:</p> <p>(a) access, collect, retain and use any information about the Client;</p> <p>(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness;</p> <p>(ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, whether collected by HMS from the Client directly or obtained by HMS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>18.3 The Client shall have the right to request HMS for a copy of the information about the Client retained by HMS and the right to request HMS to correct any incorrect information about the Client held by HMS.</p>	<p>24. Client's Responsibilities</p> <p>24.1 The Client shall:</p> <p>(a) satisfy themselves on Delivery that the Equipment is suitable for their purposes;</p> <p>(b) notify HMS immediately either verbally or in writing of the full circumstances of any defect, mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification, and must cease use of the Equipment if such use would in any way aggravate the defect or otherwise prejudicially affect the Equipment;</p> <p>(c) notify HMS promptly when the Equipment is off-hire. After notifying HMS of such the Client must not further use the Equipment and must make the Equipment available for HMS to collect during normal business hours;</p> <p>(d) ensure that the operator of the Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;</p> <p>(e) ensure that all persons driving and/or operating the Equipment are properly skilled and qualified in accordance with:</p> <p>(i) the requirements of the "Equipment Operation" annexed to this agreement, or as amended by HMS and notified to the Client in writing from time to time;</p> <p>(ii) the manufacturer's specifications;</p> <p>(iii) OSH's Forklifts Truck Operators Safety Code and should be certified by staff trained in accordance with the Approved Code of Practice for Training Operators and Instructors of Powered Industrial Lift Trucks or another recognised and approved standard.</p> <p>(f) maintain the Equipment as is required by HMS (including, but not limited to, ensuring that checks and engine oil levels, the radiator and battery water levels and tyre pressures, and any other checks which HMS may from time to time notify to the Client);</p> <p>(g) ensure that all reasonable care is taken by the operator in handling and/or parking the Equipment, and that the Equipment is left locked and/or securely stored when not in use;</p> <p>(h) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers where applicable);</p> <p>(i) refund the Equipment prior to its return from hire. In the event the Equipment need to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the Price;</p> <p>(j) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by HMS or posted on the Equipment;</p> <p>(k) comply with all occupational health and safety laws relating to the Equipment and its operation;</p> <p>(l) on termination of the hire, deliver the Equipment, complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to HMS (or HMS' designated employee);</p> <p>(m) keep the Equipment under their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment; nor alter or make any additions to the Equipment, including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(n) use the Equipment solely for the Client's own work and shall not permit the Equipment (or any part thereof) to be used by any other party for any other work;</p> <p>(o) permit HMS to access the Equipment at any time to inspect its condition and attend to any maintenance or repair matters;</p> <p>(p) immediately notify HMS should the Equipment become bogged or stuck (refer also (h)).</p>
<p>5. Price and Payment</p> <p>5.1 At HMS' sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by HMS to the Client; or</p> <p>(b) HMS' estimated Price (subject to clause 5.2) which shall not be deemed binding upon HMS as the actual Price, this can vary as determined upon completion of the Services. HMS undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate.</p> <p>(c) HMS' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of 30 days from the date of issue of the quotation.</p> <p>5.2 HMS reserves the right to change the Price if a variation to HMS' quotation is requested.</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, availability of machinery, safety considerations, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or</p> <p>(d) in the event of increases to HMS in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and international freight and insurance charges for foreign sourced components) which are beyond HMS' control.</p> <p>5.3 Where HMS is requested to store the Client's machine, or where the machine is not collected within twenty-four (24) hours of advice to the Client that it is ready for collection, then HMS (at its sole discretion) may charge a fee of storage.</p> <p>5.4 At HMS' sole discretion a non-refundable deposit may be required. Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date determined by HMS which may be:</p> <p>(a) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(b) the date specified on any invoice or other form as being the date for payment; or</p> <p>(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HMS.</p> <p>5.6 Payment may be made by cash, cheque, bank cheque, electronic transfer or by any other method as agreed to between the Client and HMS.</p> <p>5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by HMS nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to HMS an amount equal to any GST HMS must pay for any supply by HMS under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p>	<p>(e) the Client irrevocably authorises HMS to enter any premises where HMS believes the Goods are kept and recover possession of the Goods.</p> <p>(f) HMS shall have possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HMS.</p> <p>(h) HMS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>19. Unpaid Seller's Rights</p> <p>19.1 Where the Client has left any item with HMS for repair, modification, exchange or for HMS to perform any other service in relation to the item and HMS has not received or been tendered the whole of any moneys owing to it by HMS, HMS shall have, until all moneys owing to HMS are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>19.2 The lien of HMS shall continue despite the commencement of proceedings, or judgment for any moneys owing to HMS having been obtained against the Client.</p>	<p>(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness;</p> <p>(ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, whether collected by HMS from the Client directly or obtained by HMS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>18.3 The Client shall have the right to request HMS for a copy of the information about the Client retained by HMS and the right to request HMS to correct any incorrect information about the Client held by HMS.</p> <p>20. General</p> <p>20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be held to be void, illegal or unenforceable, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.</p> <p>20.3 HMS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HMS of these terms and conditions (alternatively HMS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>20.4 HMS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.</p> <p>20.5 The Client cannot licence or assign without the written approval of HMS.</p> <p>20.6 HMS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HMS' sub-contractors without the authority of HMS.</p> <p>20.7 The Client agrees that HMS may amend these terms and conditions at any time. If HMS makes a change to these terms and conditions, then that change will take effect from the date on which HMS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request to HMS to provide Goods/Equipment.</p> <p>20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>20.9 Both parties warrant that it has the power to enter into this agreement and to assign all its powers and authorities to allow it to do so. It is not insuring and that this agreement creates binding and valid legal obligations on it.</p>	<p>(j) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by HMS or posted on the Equipment;</p> <p>(k) comply with all occupational health and safety laws relating to the Equipment and its operation;</p> <p>(l) on termination of the hire, deliver the Equipment, complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to HMS (or HMS' designated employee);</p> <p>(m) keep the Equipment under their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment; nor alter or make any additions to the Equipment, including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(n) use the Equipment solely for the Client's own work and shall not permit the Equipment (or any part thereof) to be used by any other party for any other work;</p> <p>(o) permit HMS to access the Equipment at any time to inspect its condition and attend to any maintenance or repair matters;</p> <p>(p) immediately notify HMS should the Equipment become bogged or stuck (refer also (h)).</p> <p>24.2 Immediately on request for HMS to collect the Client will pay:</p> <p>(a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to HMS;</p> <p>(b) all costs incurred in cleaning the Equipment;</p> <p>(c) all costs of repairing any damage caused by:</p> <p>(i) the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;</p> <p>(ii) willful or negligent actions of the Client or the Client's employees;</p> <p>(iii) vandalism, or (in HMS' reasonable opinion) in any way whatsoever under the Client's control by the ordinary use of the Equipment by the Client.</p> <p>(d) the cost of fuels and consumables provided by HMS and used by the Client;</p> <p>(e) any costs incurred by HMS in picking up and returning the Equipment to HMS, or if the Client does not return the Equipment to HMS' premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;</p> <p>(f) any lost hire fees HMS would have otherwise been entitled to for the Equipment under this or any other hire agreement;</p> <p>(g) any insurance excess payable in relation to a claim made by the Client in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Client.</p>
<p>6. Delivery of Goods/Equipment</p> <p>6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time HMS (or HMS' nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>6.2 At HMS' sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>6.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment, then HMS shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.</p> <p>6.4 Any time or date given by HMS to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if the Client is not liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p>7. Risk to Goods</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, HMS is entitled to</p>	<p>10.1 In the event of HMS agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>10.2 The Client indemnifies HMS from and against all HMS' costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising HMS' rights under this clause.</p> <p>10.3 The Client irrevocably appoints HMS and each director of HMS as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.</p> <p>11. Client's Disclaimer</p> <p>11.1 The Client hereby disclaims any right to rescind, or cancel any contract with HMS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by HMS and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.</p> <p>12. Consumer Guarantees Act 1993</p> <p>12.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded).</p> <p>13. Defects</p> <p>13.1 The Client shall inspect the Goods/Equipment on delivery and shall within three (3) days of delivery (time being of the essence) notify HMS of any defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford HMS an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with this clause, HMS shall be presumed to be satisfied and assumed to be free from any defect or damage. For defective Goods/Equipment, which HMS has agreed in writing that the Client is entitled to reject, HMS' liability is limited to either (at HMS' discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.</p> <p>13.2 Goods/Equipment will not be accepted for return (or for any reason other than those specified in clause 13.1 above) or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).</p>	<p>20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be held to be void, illegal or unenforceable, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.</p> <p>20.3 HMS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HMS of these terms and conditions (alternatively HMS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>20.4 HMS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.</p> <p>20.5 The Client cannot licence or assign without the written approval of HMS.</p> <p>20.6 HMS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HMS' sub-contractors without the authority of HMS.</p> <p>20.7 The Client agrees that HMS may amend these terms and conditions at any time. If HMS makes a change to these terms and conditions, then that change will take effect from the date on which HMS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request to HMS to provide Goods/Equipment.</p> <p>20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>20.9 Both parties warrant that it has the power to enter into this agreement and to assign all its powers and authorities to allow it to do so. It is not insuring and that this agreement creates binding and valid legal obligations on it.</p>	<p>(d) the cost of fuels and consumables provided by HMS and used by the Client;</p> <p>(e) any costs incurred by HMS in picking up and returning the Equipment to HMS, or if the Client does not return the Equipment to HMS' premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;</p> <p>(f) any lost hire fees HMS would have otherwise been entitled to for the Equipment under this or any other hire agreement;</p> <p>(g) any insurance excess payable in relation to a claim made by the Client in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Client.</p>
<p>8. Risk to Goods</p> <p>8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, HMS is entitled to</p>	<p>13.2 Goods/Equipment will not be accepted for return (or for any reason other than those specified in clause 13.1 above) or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).</p> <p>14. Warranty</p> <p>14.1 For Goods not manufactured by HMS, the warranty shall be the content warranty provided by the manufacturer of the Goods. HMS shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>15. Intellectual Property</p> <p>15.1 Where HMS has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of HMS.</p> <p>15.2 The Client warrants that all designs, specifications or instructions given to HMS will not cause HMS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HMS against any action taken by a third party against HMS in respect of any such infringement.</p> <p>15.3 The Client agrees that HMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which HMS has created for the Client.</p> <p>16. Default and Consequences of Default</p> <p>16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HMS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>16.2 If the Client owes HMS any money the Client shall indemnify HMS and agree to pay to HMS any amount incurred by HMS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HMS' collection agency costs, and bank dishonour fees).</p> <p>16.3 Further to any other rights or remedies HMS may have under this contract, if a Client has made payment to HMS by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HMS under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.</p> <p>16.4 Without prejudice to any other rights or remedies HMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HMS may suspend or terminate the supply of Goods/Equipment to the Client. HMS will not be liable to the Client for any loss or damage the Client suffers because HMS has exercised its rights under this clause.</p> <p>16.5 Without prejudice to HMS' other remedies at law HMS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HMS shall, whether or not payment has been made, become immediately payable if:</p> <p>(a) any money payable to HMS becomes overdue, or in HMS' opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>17. Cancellation</p> <p>17.1 HMS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice HMS shall repay to the Client any money paid by the Client for the Goods/Equipment. HMS shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>17.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by HMS as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>18. Privacy Act 1993</p> <p>18.1 The Client authorises HMS or HMS' agent to:</p> <p>(a) access, collect, retain and use any information about the Client;</p> <p>(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness;</p> <p>(ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, whether collected by HMS from the Client directly or obtained by HMS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>18.3 The Client shall have the right to request HMS for a copy of the information about the Client retained by HMS and the right to request HMS to correct any incorrect information about the Client held by HMS.</p> <p>19. Unpaid Seller's Rights</p> <p>19.1 Where the Client has left any item with HMS for repair, modification, exchange or for HMS to perform any other service in relation to the item and HMS has not received or been tendered the whole of any moneys owing to it by HMS, HMS shall have, until all moneys owing to HMS are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>19.2 The lien of HMS shall continue despite the commencement of proceedings, or judgment for any moneys owing to HMS having been obtained against the Client.</p> <p>20. General</p> <p>20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be held to be void, illegal or unenforceable, the validity, enforceability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.</p> <p>20.3 HMS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HMS of these terms and conditions (alternatively HMS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).</p> <p>20.4 HMS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.</p> <p>20.5 The Client cannot licence or assign without the written approval of HMS.</p> <p>20.6 HMS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HMS' sub-contractors without the authority of HMS.</p> <p>20.7 The Client agrees that HMS may amend these terms and conditions at any time. If HMS makes a change to these terms and conditions, then that change will take effect from the date on which HMS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request to HMS to provide Goods/Equipment.</p> <p>20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>20.9 Both parties warrant that it has the power to enter into this agreement and to assign all its powers and authorities to allow it to do so. It is not insuring and that this agreement creates binding and valid legal obligations on it.</p> <p>21. Hire Period</p> <p>21.1 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected</p>	<p>20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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Please note that a larger print version of these terms and conditions is available from HMS on request.