

# TERMS & CONDITIONS OF HIRE INCLUDING INSURANCE

# Hill Country Hire

A DIVISION OF WALTON CONTRACTING LTD

P (06) 868 7682 | E [haydon@hillcountryhire.co.nz](mailto:haydon@hillcountryhire.co.nz)

## GENERAL CONDITIONS OF HIRE.

- Charges are based on time out, not time used.
- Rates are based on Day (6 hours per day), Week (30hrs = 5 days x 6hrs), and Month (120hrs = 4 weeks x 30hrs).
- Based on the minimums with no downtime.
- If the equipment is not working, notification must be given on the same day by phone, email, otherwise daily hire will continue. **NO EXCEPTIONS.**
- A delivery and collection service is available for an extra charge.
- Disposables such as fuel, oil, petrol and lost keys are an extra charge.
- Any equipment that is returned in an unreasonable condition may incur a cleaning fee (\$70/hr).
- Daily checks including maintaining fuel, oil, and water levels and also greasing are the hirer's responsibility.
- Deposits are required before all hires commence, unless a charge account is arranged.
- Payment of accounts are due on or before the 20th of the month following return dates on invoice. Interest will be charged on all overdue accounts.
- Damage insurance and GST are not included in the hire rate.

## 1 DEFINITIONS

- "Hill Country" shall mean Walton Contracting Ltd its successors and assigns or any person acting on behalf of and with the authority of Walton Contracting Ltd.
- "Hirer" means that person (or persons) entering into this contract and where that person (or persons) enters into this contract for or on behalf of another entity, includes such entity. This expression also extends to those claiming under (or authorised by) the Hirer.
- "Equipment" shall mean any Equipment (including but not limited to chattels machinery and plant including all fittings accessories, tool and parts) supplied on hire by Hill Country to the Hirer and are as described on the invoices, quotation, work authorisation or any other forms as provided by Hill Country to the Hirer (and where the context so permits shall include any supply of Services as hereinafter defined).
- "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Hirer on a principal debtor basis.
- "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Hill Country to the Hirer.
- "Trade Customers" are only those Hirer's whom Hill Country has agreed is currently entitled to trade credit terms.
- "Price" shall mean the cost of the hire of the Equipment as agreed between Hill Country and the Hirer subject to Clause 3 of this contract.
- "Contract Term" shall mean the agreed time period of the contract from the date of commencement as described on any Credit Application, quotation, work authorisation or invoice.

## 2 ACCEPTANCE

- Any instructions received by Hill Country from the Hirer for the hiring of Equipment and/or the Hirer's acceptance of Equipment supplied on hire by Hill Country shall constitute acceptance of the terms and conditions contained herein.
- None of Hill Country's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of Hill Country in writing nor is Hill Country bound by any such unauthorised statements.
- Where more than one Hirer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- Upon acceptance of these terms and conditions by the Hirer the terms and conditions are irrevocable and can only be amended with the written consent of Hill Country.
- The Hirer shall give Hill Country not less than fourteen (14) days prior written notice of any proposed change of ownership of the Hirer or any change in the Hirer's name and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's address, facsimile number, or business practice). The Hirer shall be liable for any loss incurred by Hill Country as a result of the Hirer's failure to comply with this clause.
- Equipment and/or any Equipment is supplied by Hill Country based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Hirer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.

## 3 CONTRACT TERM

- The Hirer acknowledges and agrees that these Terms and Conditions of Hire shall be valid for a Contract Term of up to ten (10) months from the date of commencement unless otherwise agreed in writing.
- The Hirer further acknowledges and agrees that there is no right of renewal of this contract unless otherwise agreed in writing.

## 4 PRICE AND PAYMENT

- The Equipment is hired at the rate shown on Hill Country's quotation offer unless there is a contrary agreement, in writing, between Hill Country and the Hirer, Cartage, fuel, blade wear (moleplough, aerator) knife wear (chippers, augers, mulchers) chisel wear (breakers, etc) tipwear (rippers, cultivators, etc.) as set out in the current product information and being measured by Hill Country and assessed at Hill Country's discretion, along with all saleable and consumable items are extra and not included in the hire rate. Hill Country reserves the right to revise product information and related charges from time to time without notice to the Hirer.
- The Hirer acknowledges that the rate offer is that which is available at Hill Country's premises where the hiring took place and that the Hirer has had every opportunity to check the rates applicable. Whether or not the Hirer has checked those rates is the Hirer's responsibility and whether the Hirer does so is entirely at the Hirer's discretion.
- Hill Country reserves the right to change the Price in the event of a variation to Hill Country's quotation.
- Except where Hill Country dispenses with this requirement a deposit and/or bond shall be paid or given at the commencement of the hire period such deposit or bond to be specified in the Contract at Hill Country's discretion.
- At Hill Country's sole discretion;
  - payment shall be due before delivery of the Equipment, or
  - payment for approved Hirer's shall be due fourteen (14) days following the date of the invoice.
- Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Hirer's address or address for notices.
- With respect to "Non Trade Customers" time for payment shall be made on the date when the Equipment is returned, or within seven (7) days of the commencement of the hire period, whichever is earlier. Where the hire period is extended to more than seven (7) days then the hire charge shall be payable at the end of each seven (7) day period in respect of the prior seven (7) days and at the end of the term of hire in respect of the hire period not previously paid for.
- Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Hirer and Hill Country.
- GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- The Hirer accepts and agrees Hill Country has right of recovery, and in the event of a liquidation where payments have been made in accordance with normal business practice and as set out herein, such payment shall not be regarded as preferential.

## 5 DELIVERY OF EQUIPMENT

- Subject to the express terms of this agreement, if Hill Country agrees to send the Equipment to the Hirer at the expense of the Hirer then delivery of the Equipment to a carrier, either named by the Hirer or failing such naming to a carrier at the discretion of Hill Country for the purpose of transmission to the Hirer, is deemed to be a delivery of the Equipment to the Hirer.
- The costs of carriage and any insurance which the Hirer reasonably directs Hill Country to incur shall be reimbursed by the Hirer (without any set-off or other withholding whatever) and shall be due on the date for payment of the price.
- The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Hirer is unable to take delivery of the Equipment as arranged then Hill Country shall be entitled to charge a reasonable fee for redelivery.
- The Hirer shall take delivery of the Equipment tendered notwithstanding that the specifications may differ from the specifications originally agreed to, provided that the Price shall be adjusted pro rata to the discrepancy.
- The failure of Hill Country to deliver shall not entitle either party to treat this contract as repudiated.
- Hill Country shall not be liable for any loss or damage whatever due to failure by Hill Country to deliver the Equipment (or any part of the Equipment) promptly or at all.

- Rates are subject to change without notice.
- Full conditions of hire are listed on the reverse of this form.
- All traffic infringement notices (i.e. traffic tickets) that are incurred by company or representative of that company while on hire, are to be paid for by the Hirer. There are **NO EXCEPTIONS.**

## OPERATION HEALTH & SAFETY

- Competent drivers or operators must be given charge of the equipment while in the Hirer's possession and the Hirer must be responsible for all cleaning, lubrication and maintenance of adjustment, and for any damage due to overlooking mistakes, or neglect in handling, etc. during the hire period.
- The Hirer must keep the equipment in proper working order at his own expense.
- The Hirer must ensure the driver, or operator, has a current driver's licence with the appropriate class for the equipment hired.
- The Hirer and employees have (or have obtained from Hill Country Ltd) sufficient knowledge to safely operate the equipment hired.
- The Hirer shall perform all its obligations under the Health and Safety at Work Act 2015 or any amended or replacement legislation when using the Equipment.

## 6 HIRE PERIOD

- Hiring Charges shall commence from the time the Equipment is collected by the Hirer from Hill Country's premises and continue until the return of the Equipment to Hill Country's premises, and/or until the expiry of the Minimum Hiring Period, whichever last occurs.
- If the Equipment is not returned to Hill Country's premises within the hire period, then additional hiring charges shall be payable.
- The business daily rate applies 1st and is chargeable for each 10 hour period of hire. Extra hours of hire will be charged additional, pro rata at the agreed rate.
- The 24hr daily rate applies 1st and is chargeable for each 24 hour period of hire. Extra hours of hire will be charged additional, pro rata at the agreed rate.
- The weekly rate applies to and is chargeable for hire with duration of 7 days or 7 consecutive 24 hour periods. Extra days of hire will be charged additional, pro rata at the weekly rate.
- The monthly rate applies to and is chargeable for hire with a minimum of 29 days. Extra days of hire will be charged additional, pro rata at the monthly rate.
- Where hour meter/s mounted on the plant/or equipment are used to determine the hire charge, this record of use shall be in addition to the terms determined in clauses 4.2 to 4.7. Hour charges shall be calculated to the nearest half hour above the visual reading on the meter/s. Where the recording device is found not to be working either during or at the completion of the hire period then Hill Country will estimate the hours used and the onus is on the Hirer to prove otherwise.
- Should Hill Country agree with the Hirer to deliver and collect the Equipment, hire charges shall commence from the time the Equipment leaves Hill Country's premises until Hill Country is notified by the Hirer that the Equipment is available for collection. Notification shall constitute suspension of hire, providing notification is given by the Hirer in time for the Equipment to be picked up and returned to Hill Country's premises by the required return time on the day the hire ceases. The required return times are no later than 5.30 p.m. week days, or by arrangement weekends or Public Holidays, or such earlier time as the hire period may terminate. In the event insufficient notice is given the Hirer may at Hill Country's discretion be charged an extra 6 hours of hire.
- If there are any delays due to free access not being available then the Hirer shall be responsible and shall reimburse the Hirer for all lost hire fees associated with the Equipment being unavailable. The Hirer shall also be responsible for all other expenses and costs incurred by Hill Country due to delays in access to the Equipment.
- No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by Hill Country. In the event of Equipment breakdown provided the Hirer notifies Hill Country immediately and obtains an "OFF-HIRE" number as verification, 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 Hirer.

## 7 HIRER'S RESPONSIBILITIES

- The Hirer shall:
  - notify Hill Country immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - use the Equipment properly and for the purpose for which it was designed acknowledging Hill Country gives no warranty as the "Equipment's" capacity;
  - ensure only competent and qualified drivers and operators are given charge of the Equipment while in the Hirer's possession and shall be responsible for all cleaning, lubrication and operating adjustments and for any damage occurring due to overloading mistakes or neglect in handling, operation etc during the hire period;
  - at their own expense clean and keep the Equipment in good and substantial repair and condition and proper working order and pay all costs for replacements or repair required due to fire theft accident loss or otherwise during the hire period, provided the Hirer shall not undertake any repair or servicing and if any repair or servicing appears desirable shall notify Hill Country immediately. On termination of the hire, the Hirer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to Hill Country. The Hirer is not authorised to pledge Hill Country's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs;
  - provide all petrol, fuel, oil, cleaning and other materials and labour required for the operation of the Equipment and only fuel and lubricating oils approved by Hill Country shall be used. The Hirer shall check fuel and oil and other levels every day before starting up the Equipment;
  - keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment and the Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies Hill Country 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 Hirer;
  - accept full responsibility for and indemnify Hill Country against all claims 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, whether from the negligence of the Hirer or any other persons including but without limitation where the Equipment is being operated for any reason by Hill Country their servants or agents;
  - not 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;
  - accept full responsibility associated with any costs or liability due to the Equipment obstructing any person(s). The Hirer shall also accept full responsibility associated with any costs or liability due to the Equipment being in a location that it shouldn't be or if the equipment or Hill Country incurs any fines, towage or seizure costs or impoundment costs while the Equipment is in the custody of the Hirer;
  - forthwith on request by Hill Country advise Hill Country of the whereabouts of the Equipment and allow Hill Country (it's agents, servants or contractors) to inspect and test the Equipment and for such purposes the Hirer hereby gives irrevocable leave and license to Hill Country (it's servants, agents and contractors) to take possession of and remove the same and as agent of the Hirer, enter upon any premises where the Equipment or any part of the same may be;
  - Accept full responsibility in compliance with all current codes of practice and regulations, including the Health and Safety in Employment act, current licences such as time licences and road user charges where necessary;
  - employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
  - not exceed the recommended or legal load and capacity limits of the Equipment;
  - not use or carry any illegal, prohibited, or dangerous substance in, or on, the Equipment;
  - not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
  - satisfy itself prior to taking delivery that the Equipment is suitable for its purposes.
- The Hirer of Equipment shall ensure that:
  - the water in the radiator and battery of the Equipment is maintained at the proper level; and
  - the oil in the Equipment is maintained at the proper level; and
  - the tyres are maintained at their proper pressure.
  - The Hirer shall ensure that all reasonable care is taken in handling and parking the Equipment and that it is left securely locked when not in use.

- (e) The Hirer shall be liable for any parking or traffic infringement and will supply relevant details as required by the Police and/or Hill Country relating to any such parking or traffic infringement and offences, impoundments, towage and storage.
- 7.3 The Hirer of Equipment shall not:
- (a) sublet or Hire the Equipment to any other person; or
  - (b) permit the Equipment to be operated without their authority and then only by an authorised driver named on the front of this Agreement; or
  - (c) operate the Equipment or permit it to be operated in any race, speed test, rally, or contest, or on any closed road or non-public roadway; or
  - (d) operate the Equipment or permit it to be operated to propel or tow any other Equipment; or
  - (e) operate the Equipment 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 Equipment; or
  - (f) drive or permit the Equipment to be driven by any person if at the time of his driving the Equipment the Hirer or other person is not the holder of current driver's licence appropriate for the Equipment.
- (g) carry any animals in any vehicle without the written permission of Hill Country.

## 8 HILL COUNTRY'S RIGHT TO TERMINATE

- 8.1 Without prejudice to any other remedies available to Hill Country and notwithstanding any period of hire specified, Hill Country may terminate this hire contract without payment of compensation:
- (a) At any time by giving the Hirer two (2) hours (or if Hill Country deems it appropriate such lesser period) notices of their intention to terminate. Such notice need not be in writing and shall be deemed sufficiently given if made to the Hirer; or
- (i) the operator for the time being of the Equipment; or
  - (ii) the occupier for the time being of the premises at which the Equipment is located. (Provided that notice is deemed to be given if the Equipment is removed with no person in attendance)
- (b) Without notice if the Hirer shall commit any breach of these hire contract terms and conditions or the Hirer commits any act of bankruptcy or being a company an application is made or a resolution is passed for its winding up or being a company a receiver, manager, liquidator (provisional or otherwise) or similar person of their assets or any of them is appointed or if any execution or distress shall be levied upon the Equipment or if any judgment against the Hirer shall remain unsatisfied for seven (7) days or more or if the Hirer makes an assignment or compromise for the benefit of their creditors or being a company is placed under statutory management or if it ceases to carry on business.
- 8.2 Upon the termination of the hire period Hill Country (it's agents, servants or contractors) shall be entitled to take possession of the Equipment; for this purpose the Hirer hereby gives irrevocable leave and license to Hill Country (it's agents, servants or contractors) to enter upon any land or premises of the Hirer, or any other place (as the agent of the Hirer) where the Equipment or any Hill Country in respect of any claims, damages or expenses made against or incurred by Hill Country arising out of any action taken under Section 6 of this Contract.

## 9 CANCELLATION

- 9.1 In the event that the Hirer cancels delivery of Equipment the Hirer shall be liable for any loss incurred by Hill Country (including, but not limited to, any loss of profits) up to the time of cancellation.

## 10 RISK

- 10.1 Hill Country retains ownership in the Equipment nonetheless; all risk for the Equipment passes to the Hirer on delivery.
- 10.2 The Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies Hill Country 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 Hirer.
- 10.3 The Hirer will insure, or self insure, Hill Country's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to any person/s and/or property arising out of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 10.4 The Hirer accepts full responsibility for and shall keep Hill Country 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 Hirer or any other persons.

## 11 EQUIPMENT DAMAGE

- 11.1 The Hirer is responsible for any loss or damage occurring to the Equipment (other than damage arising as a consequence of a breach by Hill Country of the guarantees provided by the CGA) from the time the Hirer takes possession of the Equipment until it is returned to the possession of Hill Country and the Hirer has its own insurance to cover its loss. The cost of any replacement or repairs resulting from loss or damage will be charged to and payable by the Hirer. The Hirer shall notify Hill Country immediately if the Equipment is lost or damaged and shall forthwith follow any reasonable request by Hill Country relating to Hill Country's enquiries into the loss and/or damage to the Equipment.
- 11.2 Without limiting the generality of Clause 11.1 the Hirer will be liable for the full cost of repairs to or the replacement of the Equipment where the loss or damage has been caused by:-
- (a) misuse abuse, or overloading including overloading of motors or any other part of the Equipment; or
  - (b) mysterious disappearance or wrongful conversion including where Equipment is not reasonably locked and secured; or
  - (c) contravention of the conditions of this contract; or
  - (d) violation of any law or regulation; or
  - (e) damage to tyres and tubes by punctures or cuts; or
  - (f) lack of lubrication or other routine servicing by the Hirer; or
  - (g) locating, using, loading, unloading transporting the Equipment on or over water, wharves, bridges or vessels of any kind; or
  - (h) damage caused by exposure to any corrosive substance; or
  - (i) negligence of the Hirer where the Hirer has failed by intent or lack of due care to take all responsible precautions to protect the Equipment from loss or damage; or
  - (j) consumption of alcohol and/or drugs; or
  - (k) loss or damage to tools, grease guns, hoses electric cords and all other similar accessories; or
  - (l) any combination of the foregoing.

## 12 BUSINESS PURPOSES

- 12.1 If the Hirer hires or holds itself out as hiring the Equipment for the purposes of a business or in an other way which is not ordinarily used by a consumer (as defined in the CGA); or acquires or holds itself out as acquiring any consumables (e.g. goggles, earmuffs etc) for the purposes of a business or in any way acquires any consumables which are not ordinarily required by a consumer, then the Hirer agrees to the following terms:
- (a) the conditions warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 (CGA) or implied by the common law will not apply and are excluded from this contract and in particular no warranty is made by Hill Country concerning the performance specifications or capacity of the Equipment or consumables.
  - (b) the Hirer may not claim on any remedies set out in the CGA from Hill Country or manufacturer of the Equipment or consumables or from any manufacturer of the components or parts in the Equipment or consumables.
  - (c) Hill Country's liability shall be limited to replacement or repair (at Hill Country's option) of any Equipment or consumables it considered upon inspection to be defective.
  - (d) Hill Country shall not be responsible to the Hirer or to third parties for any damage that may be done by Hill Country's delivery and collection vehicle or Hill Country's servants or agents on effecting delivery and/or collection of the Equipment.
  - (e) Hill Country and it's employees contractors and agents and any manufacture/s of the Equipment, will not be liable to the Hirer for any loss or damage however the loss or damage arises. This exclusion of liability includes but is not limited to, consequential loss or damage caused or arising from breakdown of the Equipment, delays in manufacturing or delivery, faulty installation, unreasonable use, negligence (including a failure to do something that may have prevented a failure) faulty specifications and design, and faulty material, equipment or component parts in the Equipment or consumables. The exclusion also includes costs incurred in returning the Equipment or consumables to Hill Country or to any manufacturer.
  - (f) the Hirer indemnifies Hill Country against all claims whatsoever arising from the hire of the Equipment or acquisition of the consumables.

## 13 TITLE OF EQUIPMENT (HIRE)

- 13.1 The Equipment is and will at all time remain the absolute property of Hill Country.
- 13.2 If the Hirer fails to return the Equipment to Hill Country then Hill Country or Hill Country's agent may enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated as the invitee of the Hirer and take possession of the Equipment, without being responsible for any damage thereby caused.
- 13.3 The Hirer is not authorised to pledge Hill Country's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## 14 DEFECTS

- 14.1 The Hirer shall inspect the Equipment on delivery and shall within forty eight (48) hours notify Hill Country of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Hirer shall afford Hill Country an opportunity to inspect the Equipment within a reasonable time following delivery if the Hirer believes the Equipment is defective in any way. If the Hirer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Hill Country has agreed in writing that the Hirer is entitled to reject, Hill Country's liability is limited to replacing the Equipment.

## 15 WARRANTY

- 15.1 No warranty is given by Hill Country as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. Hill Country shall not be responsible for any loss or damage to the Equipment, or caused by the Equipment, or any part thereof however arising.

## 16 CONTRACTUAL REMEDIES ACT 1979

- 16.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

## 17 DEFAULT & CONSEQUENCES OF DEFAULT

- 17.1 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 one half percent (2.5%) per calendar month (and at Hill Country's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 In the event that the Hirer's payment is dishonoured for any reason the Hirer shall be liable for any dishonour fees incurred by Hill Country.
- 17.3 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify Hill Country from and against all costs and disbursements incurred by Hill Country in pursuing the debt including legal costs on a solicitor and own client basis and Hill Country's collection agency costs.
- 17.4 Hill Country shall be entitled to reclaim any Equipment in the Hirer's possession or control, which has been supplied by Hill Country and shall be entitled to enter, directly or by its agents, upon any land or premises where Hill Country believes the Equipment If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 17.5 In the event that:
- (a) any money payable to Hill Country becomes overdue, or in Hill Country's opinion the Hirer will be unable to meet its payment as they fall due; or
  - (b) the Hirer becomes insolvent, convenes a meeting, or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of any Hirer; or
  - (d) any Equipment is not returned to Hill Country on its due date; then
  - (e) Hill Country shall be entitled to cancel all or any part of any order with the Hirer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (i) all amounts owing to Hill Country shall, whether or not due for payment, immediately become due and payable;
  - (ii) Hill Country shall be entitled to reclaim any Equipment in the Hirer's possession or control, which has been supplied by Hill Country and shall be entitled to enter, directly or by its agents, upon any land or premises where Hill Country believes the Equipment which it has supplied is stored without being liable to any person.

## 18 SECURITY AND CHARGE

- 18.1 Despite anything to the contrary contained herein or any other rights which Hill Country may have howsoever:
- (a) where the Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Hirer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Hill Country or Hill Country's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Hirer and/or the Guarantor acknowledge and agree that Hill Country (or Hill Country's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should Hill Country elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Hirer and/or Guarantor shall indemnify Hill Country from and against all Hill Country's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Hirer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Hill Country or Hill Country's nominee as the Hirer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 18.1.

## 19 PRIVACY ACT 1993

- 19.1 The Hirer and the Guarantor/s (if separate to the Hirer) authorise Hill Country to:
- (a) collect, retain and use any information about the Hirer and/or the Guarantor/s, for the purpose of assessing the Hirer's and/or the Guarantor/s creditworthiness or marketing products and services to the Hirer and/or the Guarantor/s; and
  - (b) to disclose information about the Hirer and/or the Guarantor/s, whether collected by Hill Country from the Hirer and/or the Guarantor/s directly or obtained by Hill Country and/or the Guarantor/s 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 Hirer and/or the Guarantor(s).
- 19.2 Where the Hirer and/or the Guarantor/s are an individual the authorities under (clause 19.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Hirer and/or the Guarantor/s shall have the right to request Hill Country for a copy of the information about the Hirer and/or the Guarantor/s retained by Hill Country and the right to request Hill Country to correct any incorrect information about the Hirer and/or the Guarantor/s held by Hill Country.

## 20 PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 20.1 To the extent that these Terms and Conditions of Hire do not exceed a twelve (12) month contract term, the Hirer acknowledges that nothing in this agreement creates or provides for a security interest.
- 20.2 To the extent that these Terms and Conditions of Hire do exceed a twelve (12) month contract term, this agreement is the security agreement for the purposes of PPSA generally and in particular Section 36
- 20.3 Where Hill Country Hire is selling Goods subject to retention of title (clause 0), the Hirer acknowledges that this agreement is the security agreement which creates a purchased money security interest in the Goods and the following PPSA clauses apply.
- 20.4 Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by Hill Country to the Hirer (if any) and all Goods that will be supplied in the future by Hill Country to the Hirer.
- 20.5 The Hirer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Hill Country may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Hill Country for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Hill Country; and
  - (d) immediately advise Hill Country of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 20.6 Hill Country and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 20.7 The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 20.8 Unless otherwise agreed to in writing by Hill Country, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 20.9 The Hirer shall unconditionally ratify any actions taken by Hill Country under clauses 20.1 to 20.7.

## 21 SIGNATORY'S WARRANTY AS TO AGENCY FROM HIRER

- 21.1 Where the Contract is signed by a person on behalf of the Hirer (but the signatory is not the Hirer named in the Contract) then the following provisions shall take effect:
- (a) the person signing the Contract warrants to Hill Country that he or she has the full authority of the Hirer to enter into this Contract; and
  - (b) the person signing this Contract on behalf of the Hirer shall remain personally liable hereunder until all obligations of the Hirer have been fully met or any monies due hereunder by the Hirer to Hill Country; and
  - (c) the person signing this Contract on behalf of the Hirer acknowledges that Hill Country enters into this Contract in reliance upon the warranty given in clause 22.1 (a) and the acknowledgment of personal liability set out in clause 21.1 (b) hereof.

## 22 GENERAL

- 22.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 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.
- 22.3 Hill Country shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by Hill Country of these terms and conditions.
- 22.4 In the event of any breach of this contract by Hill Country the remedies of the Hirer shall be limited to damages. Under no circumstances shall the liability of Hill Country exceed the Price of the Equipment.
- 22.5 The Hirer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Hirer by Hill Country.
- 22.6 Hill Country may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 22.7 Hill Country reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Hill Country notifies the Hirer of such change.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 22.9 The failure by Hill Country to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Hill Country's right to subsequently enforce that provision.