

1. DEFINITIONS

- 1.1. "COMPANY" shall mean Colab Projects Limited (Company Number 5650507) and its successors and assigns.
- 1.2. "HIRER" shall mean the person(s), company or trust named in the above quote/contract for equipment hire and any person(s) acting on their behalf of or with their authority.
- 1.3. "HIRE AGREEMENT" shall mean these Terms together with any other quote/contract for equipment hire entered into between the Company and the Hirer
- 1.4. "THE HIRE PERIOD" shall mean the agreed period of hire of Equipment by the Hirer, subject to clause 6 of these Terms
- 1.5. "EQUIPMENT" shall mean the equipment supplied on hire by the Company to the Hirer and may include where necessary accessories to complement the Equipment.
- 1.6. "TERMS" shall mean these terms and conditions of hire.
- 1.7. "TRADE CUSTOMER" shall mean those customers whom the Company has agreed are entitled to trade credit terms

2. PRICE

- 2.1. Unless specified in writing to the contrary any indication of price for the hiring of Equipment provided by the Company is by way of an estimate only and shall not be binding on the Company.

3. ACCEPTANCE OF HIRE TERMS

- 3.1. These Terms apply to all Equipment hired by the Hirer from the Company.
- 3.2. The Hirer shall be deemed to have accepted these Terms once they have signed the Hire Agreement.
- 3.3. The Hirer acknowledges and agrees that:
 - (a) they have not relied on the skill and judgment of the Company in selecting the Equipment
 - (b) they have checked the Equipment for suitability, functionality and completeness;
 - (c) they have determined the Equipment fit for the purpose for which it is required;
 - (d) no employee or agent of the Company may make any representation, warranty or promise in relation to the Equipment other than as contained in these Terms.
- 3.4. The person signing the Hire Agreement for and on behalf of the Hirer (if not personally the Hirer) warrants that they have the authority of the Hirer to make the contract on the Hirer's behalf and that they are empowered by the Hirer to bind the Hirer to the Hire Agreement. The person so signing hereby indemnifies the Company against all losses and costs that may be incurred by the Company arising out of the person signing the Hire Agreement failing to have such power or authority

4. QUOTATION

- 4.1. Where the price ("Hire Fee") is given by quotation by the Company for Equipment hire then, unless expressly agreed otherwise:
 - (a) The Hire Fee shall be on a daily rate:
 - (b) Unless otherwise agreed the quotation shall be valid and open for acceptance by the Hirer for five (5) days from the date of issue; and
 - (c) The Hire Fee shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - (d) Where services are required in addition to the quotation, including but not limited to delivery, the Hirer agrees to pay for the additional cost of such services.
 - (e) No quotation shall be given other than in writing.

5. PAYMENT OF HIRE FEE

- 5.1. Prior to the commencement of hire the Hirer shall provide to the Company a deposit of 50% of the Hire Fee (at the Company's discretion) to secure the Equipment booking. The deposit amount shall be offset against the total Hire Fee and other additional service charges.
- 5.2. Where the Hirer is a "non-trade customer" the Hire Fee and any other additional service charges shall be paid prior to delivery or collection of the Equipment.
- 5.3. Where the Hirer is a Trade Customer, time for payment of the Hire Fee and any other additional service charges shall be of the essence and shall be the 20th day of the month following the date of the Hire Agreement.
- 5.4. If the Hirer has not paid the Hire Fee and any other additional service charges in full by the due date, the Company may charge the Hirer interest compounding monthly on the unpaid overdue balance at the rate of 4% per annum above the current overdraft rate charged by the Company's bankers, and the Company may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid.

6. HIRE PERIOD

- 6.1. The minimum Hire Period is one day commencing at the time the Equipment is collected or leaves the premises of the Company.
- 6.2. The Hire Period ends at:
 - (a) the agreed date of return or collection of the Equipment; or
 - (b) if the Equipment has been returned in the same condition as at the commencement of the Hire Period, the date on which the Equipment has actually been returned to the Company; or
 - (c) if the Equipment is lost, the time the Equipment is recovered and returned to the Company or replaced by an equivalent or comparable item of Equipment and is available for hire by the Company; or
 - (d) if the Equipment is damaged, the time the Equipment is repaired and is available for re-hire; or

- (e) if the Equipment is destroyed, the time the Equipment is replaced by an equivalent or comparable item of Equipment and is available for hire, whichever is the later.

6.3. Extensions of Equipment hire are given at the sole discretion of the Company and a payment of a further Hire Fee will be required at that time. Written notification and/or payment of the Hire Fee will be considered an extension of this contract.

6.4. Should the Hirer not notify the Company of their intent to renew or terminate the contract at the renewal date, the Company shall continue to charge for any time the Equipment is retained by the Hirer.

6.5. If delivery and collection by the Company has been agreed, the Hirer shall ensure free access to the delivery site by the Company. In the event of any delays due to free access being unavailable the Hirer shall reimburse the Company for all associated lost Hire Fees. The Hirer shall also be responsible for any other expenses and costs incurred by the Company related to delays in access to the delivery site. The risk of security remains with the Hirer until the Equipment is collected by the Company.

7. DELIVERY CHARGES

7.1. The Hire Fee does not include delivery and pick up of the Equipment.

7.2. Where delivery and/or collection of the Equipment has been arranged;

- (a) Minimum delivery charges apply, which shall be shown on the Hire Agreement. The Company reserves the right to increase delivery charges due without limitation to increased driver waiting time and/or access difficulties.
- (b) the costs of delivery shall be paid by the Hirer (without any set-off) and shall be due on the date for payment of the Hire Fee;
- (c) the Company shall not be liable for any loss or damage howsoever caused due to failure by the Company to deliver the Equipment (or part of it) promptly or at all;
- (d) The Company may deliver the Equipment in separate deliveries.

8. HIRER RESPONSIBILITIES

8.1. The Hirer shall take proper care of the Equipment and shall only use it in suitable weather conditions for the purpose for which it has been designed and shall not attempt to alter, repair, modify or clean the Equipment. The Hirer is expressly prohibited from cooking directly under any structure or canopy which may be included in the Equipment.

8.2. In the event of any damage to the Equipment, the Hirer shall:

- (a) Immediately notify the Company by telephone at the number provided in the Hire Agreement;
- (b) return the Equipment or make arrangements with the Company to have the Equipment collected;
- (c) not attempt to repair the damage and expressly agrees not to use pins, staples or glue or any other similar repair item on the Equipment;
- (d) be liable to the Company for the sum equivalent to the cost of making good the damage whether by repair or replacement.

8.3. In the event of loss of the Equipment the Hirer shall pay to the Company the sum equivalent to the cost of replacing the lost equipment.

8.4. In the event of breakdown of the Equipment;

- (a) The Hirer must immediately notify the Company by telephone at the number provided in the Hire Agreement;

- (b) Company shall not be liable for any loss suffered by the Hirer or liability incurred by the Hirer as a result of the breakdown howsoever caused.

- (c) Notwithstanding the foregoing any liability which may attach to the Company under the Hire Agreement shall be limited to the amount equivalent to the Hire Fee due under the Hire Agreement.

8.5. On termination of the hire, the Hirer shall ensure that the Equipment is complete and in good order as delivered or collected, fair wear and tear accepted. The Hirer shall not pledge the Company's credit for repairs or create a lien over the Equipment in respect of any repairs. In the event the Equipment is returned dirty cleaning charges shall apply.

9. LIABILITY AND INDEMNITY

9.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Company which can by law (or which can to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Company, the Company's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

9.2. The Hirer shall accept full responsibility for:

- (a) the safekeeping of the Equipment and indemnifies the Company 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 the negligence, failure or omission of the Hirer or any third person associated with the Hirer.
- (b) all claims in respect of any loss and/or 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 associated with the Hirer.
- (c) Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in the Hire Agreement;
- (d) the Hirer shall be responsible for any permits that may be required to operate the Equipment and hereby indemnifies the Company from any penalties or other obligation incurred due to the Hirers failure to obtain or comply with any such permit(s);
- (e) the Hirer shall be liable for any costs or penalties due to the Equipment creating an obstruction including without limitation any local authority fines, towage costs, seizure or impoundment costs during the Hire Period.

10. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

10.1. By agreeing to the Hire Agreement 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 Equipment previously and currently supplied by the Company to the Hirer (if any) and all Equipment that will be supplied in the future by the Company to the Hirer during the continuance of the parties' relationship.

10.2. 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 the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
- (b) indemnify, and upon demand, reimburse, the Company for all expenses incurred in registering a financing statement or a financing change statement on the PPSR or releasing any Equipment charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Company;
- (d) give the Company not less than seven (7) working days prior written notice of any proposed change in the Hirer's name and/or other change in the Hirer's details (including but not limited to changes in the Hirer's address or facsimile number);
- (e) give irrevocable authority to the Company to enter any premises occupied by the Hirer or on which Equipment is situated at any reasonable time after default by the Hirer or before default (if the Company believes a default is likely) and to remove and repossess any Equipment and any other property to which Equipment are attached or in which Equipment is incorporated. The Company shall not be liable for any costs, damages, expenses or losses incurred by the Hirer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded.
- (f) where Equipment is repossessed by the Hirer pursuant to (e) above, the Hirer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.

10.3. The following shall constitute defaults by the Hirer:

- (a) Nonpayment of any sum by the due date.
- (b) The Hirer intimates that it will not pay any sum by the due date,
- (c) Any Equipment is seized by any other creditor of the Hirer or any other creditor intimates that it intends to seize the Equipment.
- (d) Any Equipment in the possession of the Hirer is materially damaged while any sum due from the Hirer to the Company remains unpaid.
- (e) The Hirer is bankrupted or put into liquidation or a receiver is appointed to any of the Hirer's assets or a landlord distains against any of the Hirer's assets.
- (f) A Court judgment is entered against the Hirer and remains unsatisfied for seven (7) days,
- (g) Any material adverse change in the financial position of the Hirer.

11. CANCELLATION BY COMPANY

- 11.1. The Company shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of services to the Hirer if the Hirer fails to pay any money owing after the due date or the

Hirer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.

- 11.2. Any cancellation or suspension of this agreement shall not affect the Company's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of the Hire Agreement or the Hirer's obligations to the Company under the Hire Agreement.
- 11.3. If the Hirer breaches the Hire Agreement and the Hirer fail to remedy the breach within 5 days of receiving a notice of default, the Company may terminate the Hire Agreement and repossess the Equipment. The Company (or agents of the Company) may enter the Hirer's premises where the Equipment is stored for the purpose of repossessing the Equipment.

12. CANCELLATION BY THE HIRER

- 12.1 Where the Hirer cancels whether in part or in whole any part of the Equipment order;
- (a) more than 24 hours before delivery or collection the deposit paid pursuant to clause 5.0 of these Terms shall be forfeited unless an equivalent booking for hire of equipment on an alternative commencement date is made contemporaneously in which case the deposit shall be applied to that booking;
 - (b) less than 24 hours before delivery or collection, a fee of 50% of the Hire Fee shall be paid by the Hirer on the cancelled order; or
 - (c) after the Equipment has been delivered or collected 50% of the Hire Fee shall be paid plus any costs of delivery.
 - (d) After completion of set up of the Equipment at the Company's discretion.
- 12.2 For the avoidance of doubt, the Company shall not be required to make any allowance or concession to the Hirer for any period during the Hire Period where the Equipment is not in use.

13. CANCELLATION RESULTING FROM RESTRICTION OF ACTIVITIES BY A COMPETENT AUTHORITY

- 13.1 Notwithstanding clause 12 of these Terms, if there is an emergency and the Hirer is unable to fully conduct their business because of reasons of safety of the public or property or the need to prevent, reduce or overcome any hazard, harm or loss that may be associated with the emergency, including:
- (a) prohibited or restricted access cordon applying to the premises from which or to which the Equipment is to be delivered; or
 - (b) restriction by a competent authority on occupation of the premises from which or to which the Equipment is to be delivered;
- if the Hirer cancels whether in part or in whole any part of the Equipment order the deposit paid pursuant to clause 5.0 of these Terms shall be forfeited and:
- (c) more than three (3) weeks before delivery or collection, a fee of 20% of the Hire Fee shall be paid by the Hirer on the cancelled order; or
 - (d) less than two (2) weeks but more than forty-eight (48) hours before delivery or collection a fee of 50% of the Hire Fee plus any costs of delivery shall be paid by the Hirer on the cancelled order; or
 - (e) less than forty-eight (48) hours but more than 24 hours before delivery or collection a fee of 90% of the Hire Fee plus any costs of delivery shall be paid by the Hirer on the cancelled order; or

- (f) 24 hours or less than 24 hours before delivery or collection a fee of 100% of the Hire Fee plus any costs of delivery shall be paid by the Hirer on the cancelled order.

Any cancellation shall be without prejudice to the rights of either party against the other.

14 MISCELLANEOUS

- 14.1 The Company shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 Failure by the Company to enforce any of the terms and conditions contained in the Hire Agreement shall not be deemed to be a waiver of any of the rights or obligations the Company has under the Hire Agreement.
- 14.3 Where these Terms are at variance with any discussions, correspondence, the order or any written instructions from the Hirer -these Terms shall prevail.
- 14.4 These Terms may be varied by agreement in writing only.
- 14.5 The Hire Agreement is personal to the Hirer and neither the Hire Agreement nor any rights arising under it may be assigned by the Hirer.
- 14.6 If any provision in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity of the remaining provisions shall not be affected.
- 14.7 All Equipment and services supplied by the Company are subject to the laws of New Zealand and the Company takes no responsibility for changes in the law which affect the Equipment or the services supplied.
- 14.8 In the case of a person entering into a Hire Agreement in a private capacity as Hirer, the Hirer by entering into a Hire Agreement hereby authorises the disclosure of personal information regarding their creditworthiness by any other party to the Company and that this personal information may be used by the Company to advise the Hirer of the Company's other goods and services. The Hirer has rights of access to and correction of personal information contained in this contract subject to the provisions of the Privacy Act 2020.