

# APS Group NZ Ltd

INCORPORATING  
APS Equipment  
AgSpares

**These trade as separate entities  
Please tick required accounts**

(Enter different creditor accounts in  
your system if you trade with both  
companies)



## EQUIPMENT HIRE AND SALES

**APS Equipment Ltd**  
PO Box 4361  
Kamo 0141  
Ph: (09) 437 9037

[admin@apsequipment.co.nz](mailto:admin@apsequipment.co.nz)

## TRACTOR SALES AND PARTS

**AgSpares**  
PO Box 4009  
Kamo 0141  
Ph: (09) 437 9036

[admin@agspares.co.nz](mailto:admin@agspares.co.nz)

### APPLICATION FOR CREDIT – GOODS & HIRE

Trade Name: \_\_\_\_\_

Sole Trader  Partnership  Trading As  Company  Other \_\_\_\_\_

Legal Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Telephone: ☎ ( ) \_\_\_\_\_ Mobile: 📱 ( ) \_\_\_\_\_

Identification Type: \_\_\_\_\_ Identification Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Business Activities: \_\_\_\_\_

If a Company: Registered Office address and Company Number: \_\_\_\_\_

If a Partnership or Sole Trader: Please attach a copy of your Drivers Licence or Birth Certificate or Passport.

Principal Shareholders or Proprietors: \_\_\_\_\_

Name and address of all Directors, or Partners if a Partnership (EACH TO BE A PERSONAL GUARANTOR)

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

Solicitor's Name and Address: \_\_\_\_\_

Accountant's Name and Address: \_\_\_\_\_

Independent Trade References (not utilities, solicitors, accountants or banks)

1. \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

2. \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

3. \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Persons with authority to order are: \_\_\_\_\_

Name of Accounts Payable contact: \_\_\_\_\_

This form completed by: \_\_\_\_\_ Title: \_\_\_\_\_

Please read the following Terms and Conditions of Trade & Hire and sign on the last page to acknowledge your acceptance of them.

## APS Group - TERMS AND CONDITIONS OF SALE OF GOODS & EQUIPMENT HIRE

### PART A – DEFINITIONS

In these Terms and Conditions of Trade:

“**APS**” means APS Group NZ Limited and its subsidiary companies including APS Equipment Limited and the term “APS” shall be interchangeable with the term “Secured Party” for the purposes of the PPSA.

“**Account**” means the Customer’s credit account agreed with APS.

“**Customer**” means, as the context requires the person or entity:

- (a) making the application for Credit to;
- (b) Purchasing Goods from; or
- (c) entering into the Hire Contract with APS and where that person (or persons) enters into the Hire Contract for or on behalf of another entity includes each such entity and “Customer” shall be interchangeable with the term “Debtor” for the purposes of the PPSA.

“**Equipment**” means machinery and other equipment hired to a Customer as set out in any Hire Contract and shall include any replacement equipment supplied to the Customer.

“**Guarantor**” means any party executing a guarantee of the Account with APS.

“**Goods**” means all machinery and other equipment, parts and consumables goods supplied by APS to the Customer at any time that are not supplied pursuant to a Hire Contract.

“**Hire**” means any supply of Equipment on hire from APS to a Customer pursuant to a Hire Contract and “**Hired**” shall have a corresponding meaning.

“**Hire Contract**” means these Terms and shall include each “**Hire Contract Summary**” or any other agreement or writing between APS and the Customer relating to any Hire.

“**Order**” or “**Orders**” means the order or orders of the Customer to APS to supply Goods or to Hire Equipment.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Terms**” means these Terms and Conditions of Sale of Goods and Equipment Hire

### PART B - ORDERS AND PAYMENTS FOR GOODS AND HIRE

#### 1. **Orders**

Orders will be on such forms or in such manner as APS may require from time to time.

#### 2. **Acceptance**

Each Order shall constitute acceptance by the Customer of these Terms.

#### 3. **Delivery**

Where the Order makes provision for delivery then delivery shall take place at the place stated in the Order. If no place for delivery is indicated then delivery shall be made at the physical address of the Customer set out in the Order.

#### 4. **Time of Performances**

APS shall not be responsible for any delay in delivery of the Goods or Equipment and the Customer shall not be entitled to cancel Orders because of any such delay. Dates for delivery are given in good faith and are not to be treated as a condition of sale or purchase or Hire. Delivery by APS to a carrier is deemed to be delivery to the Customer.

#### 5. **Cancellation**

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms.

#### 6. **Returns**

- (a) The Customer shall not be entitled to return the Goods, other than as allowed pursuant to these Terms.
- (b) Unless specified otherwise in writing, provided that the Customer has complied in all respects with the Terms, then where parts supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to Order, APS will at its discretion replace or repair any faulty parts or refund the cost of the item, but only if a claim is made by the Customer within three (3) months of the date of purchase and within seven (7) days of the defect becoming apparent, time being of the essence in each case.
- (c) The provisions of clause 6(b) do not apply or cover damage arising from incorrect fitting or adjustment of any parts, oil or fuel contamination, electrical faults, or where a modified warranty is specified in writing when the Goods are purchased and is limited to the cost of the parts supplied.
- (d) Subject to clause 6(b), Goods correctly supplied cannot be returned without the prior consent of APS, and a re-stocking fee may be charged. No credit will be allowed for Goods returned in dirty or damaged condition or not in original undamaged packaging.
- (e) The provisions of clause 6(b) do not apply to complete tractors, telehandlers or other such machinery supplied by APS.

#### 7. **Prices**

Prices are subject to change without notice. All Orders will be charged at prices prevailing at the date of delivery of the Goods or Equipment.

#### 8. **Quotation**

Where a quotation is given by APS for the supply of Goods or Hire:

- (a) unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
- (b) the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
- (c) APS reserves the right to alter the quotation because of circumstances beyond its control

#### 9. **Errors or Omissions**

Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.

## **10. Terms of Payment**

Payment must be made in full before delivery of Goods or Hire commences unless the Customer has an Account, in which case the following provisions shall apply:

- a. Unless otherwise specified, the Goods and Hire can be invoiced and must be paid in full no later than the 20<sup>th</sup> day of the month following date of invoice.
- b. A reasonable administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.
- c. Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a day by day basis until payment is made in full.
- d. All costs of or incurred by APS as a result of a default by the Customer including but not limited to administration charges, debt collection costs and legal costs as between solicitor and client shall be payable by the Customer.
- e. If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, APS may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

## **PART C - SALE OF GOODS**

### **11. Ownership/General Lien**

- a. APS shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.
- b. APS shall have a right to stop and retrieve the Goods in transit whether or not ownership has passed.

### **12. Ownership**

- a. Until payment is made by the Customer, the Customer agrees to:
  - i. ensure the Goods are readily identifiable at all times as the property of APS;
  - ii. hold the Goods as trustee for APS and will deal with the Goods for and on behalf of APS (but will not hold the Customer out as an agent to any third parties);
- b. If the Goods are re-sold, the proceeds of re-sale will belong to APS and the Customer shall keep the proceeds of sale in a separate account for which separate records are kept.

### **13. Risk**

From the time of dispatch to the Customer by APS, risk in all Goods supplied shall pass to the Customer and any loss, damage or deterioration to the Goods shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

### **14. Merger with Other Goods**

If the Goods are attached, fixed or used as material for other goods incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party or otherwise, title in the products and services shall remain with APS until the Customer has made payment for all Goods and where those Goods are mixed with other property so as to be part of or constituent of any new goods title to those new goods shall be deemed to be assigned to APS as security for the full satisfaction by the Customer of the full amount owing by the Customer to APS, and APS's security interest in the Goods should continue in terms of Section 82 of the PPSA.

### **15. Recovery of Goods**

- a. In the event of non-payment or if payment of the Customer's Account is overdue APS shall be entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.
- b. The Customer warrants to APS that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods without releasing the Customer from liability. APS will not be responsible for any damage reasonably caused in the course of removal of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies APS in respect of damage caused in the removal of the Goods from the property of a third party.
- c. APS may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with APS. Any shortfall will remain the liability of the Customer. The Customer indemnifies APS for all costs and expenses including legal costs as between solicitor and client which APS may incur in recovering the Goods and any monies owed to it.
- d. The Customer accepts and agrees APS has right of recovery and in 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.

### **16. Authority to Sell Goods Supplied**

Notwithstanding that title in all Goods is retained by APS, the Customer is authorised to sell the Goods in the ordinary course of business provided that the authority may be removed by written notice if APS considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to APS and shall be deemed automatically revoked if the Customer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or a receiver is appointed for all or any assets of the Customer.

### **17. Sale of Goods Supplied**

- a. Where Goods in respect of which property has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for APS in terms of section 45 of the PPSA.
- b. Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for APS to the extent of proceeds of sale.
- c. Where any payments are made from the Customer's bank account otherwise than to APS payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for APS.

- d. The trust obligation imposed by this clause and APS's entitlements under the PPSA shall continue for so long as APS is unpaid for all Goods supplied to the Customer.

#### **18. Warranties**

- a. Where applicable, manufacturer's warranties will attach to the goods.
- b. To the full extent allowed by law all other warranties express or implied are expressly excluded.
- c. Unless otherwise specified, APS gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the goods.
- d. Any agreement or warranty purporting to modify clause 6(b) or clause 6(c) hereof must be in writing and signed by APS before any Goods are supplied.

#### **19. Liability**

- a. APS's liability to the Customer shall be limited to the value of the Order supplied.
- b. The Contracts and Commercial Law Act 2017, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon APS which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on APS APS'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.
- c. Except as otherwise provided above APS shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods by APS to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by APS to the Customer.

#### **20. PPSA**

- a. The Customer acknowledges and agrees that by these Terms the Customer grants a security interest (by virtue of the retention of title clause in these Terms) to APS and all Goods previously supplied by APS to the Customer (if any) and all after-acquired Goods supplied by APS to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant a "Purchase Money Security Interest" to APS, as that term is defined in the PPSA. These terms shall apply notwithstanding anything express or implied to the contrary contained in the Customer's Order.
- b. To give effect to the security interest created under (a), the Customer undertakes to:
  - i. sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which APS may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
  - ii. not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of APS;
  - iii. give APS not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address, trading name or business practice);
  - iv. be responsible for the full costs incurred by APS (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 167 of the PPSA.
  - v. The Customer waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA upon enforcement.
- c. Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by APS, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- d. To the maximum extent permitted by law, the Customer waives its rights and, with APS's agreement, contracts out of its rights under sections referred to in sections 107(2), 8(e) and (g) to (l) of the PPSA.
- e. The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms, and, with APS's agreement, contracts out of such sections.
- f. The Customer and APS agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as APS is not the secured party with priority over all other secured parties in respect of those Goods;
- g. The Customer agrees that immediately on request by APS the Customer will procure from any persons considered by APS to be relevant to its security position such agreement and waivers as APS may at any time require.

### **Part D - TERMS AND CONDITIONS OF HIRE**

#### **21. Hire Terms and Liability**

- a. All Hire charges are based on current costs and are subject to change without notice.
- b. Unless agreed in writing before the Hire commences:
  - i. the Hire commences with the delivery or collection of the equipment (as the case may be) and ends when the Equipment is returned to or collected by the Hirer; and
  - ii. the acceptance and use of the Equipment on hire from APS shall in itself constitute full acceptance of these Terms and of all charges stated on the Hire Contract.
- c. APS reserves the right to inspect the Hired Equipment at any time and to terminate the Hire forthwith if the Equipment is not being used and maintained correctly.
- d. The Customer takes full responsibility for all damage to and/or loss of Hired Equipment while it is away from APS's premises.
- e. APS takes no liability whatsoever in respect of third party of similar risks or for personal injury or consequential damage of any kind or however arising resulting from the use or failure of APS's Equipment.
- f. The Customer indemnifies APS and holds APS harmless from and against:
  - i. any claim of any kind from third parties and all damages, losses or liabilities which may arise in respect of the Equipment, its use or operation by the Customer or by any other party; and
  - ii. for all and any loss and/or damage suffered by APS as a result of any breach by the Customer of any provision of the Hire Contract and/or as a result of the Customer failing to take adequate steps to protect APS's interest in the Equipment.

g. Each of the foregoing conditions shall be without prejudice to each other.

## **22. Owners Right to Terminate Hire**

- a. In the event of the Customer defaulting or failing to comply with any of the terms of the Hire Contract then APS reserves the right to terminate the Hire forthwith and take any steps necessary to recover the Equipment, including the right to enter upon any premises where APS reasonably believes the equipment may be to recover the same. APS shall have the right to recover all amounts due for the Hire, reconditioning of Equipment if required and all costs of recovery and transport of the Equipment to APSs premises. The Customer indemnifies APS against all actions, claims, costs or damages resulting from or arising out of the exercise of APSs' rights under this clause.
- b. Without prejudice to any other remedies available to APS and notwithstanding any period of Hire specified or otherwise agreed to with the Customer, APS may terminate the Hire Contract, without payment of compensation to the Customer:
  - i. Immediately and without notice to the Customer if APS considers the Equipment is, or may be, at risk of loss and/or damage for any reason; or
  - ii. In any other case, by giving the Customer two (2) hours' notice of the intention to terminate the Hire Contract. Such notice need not be in writing and shall be deemed sufficiently given if made orally to the Customer or the operator for the time being of the Equipment. If APS cannot reasonably contact the Customer or the operator, notice may be given as soon as is reasonably practical after the Equipment is taken by APS.
- c. In the event of termination by APS, the Customer appoints APS as its agent to attend and enter any works site on behalf of the Customer to collect and return the equipment to APS.

## **23. Customer's Obligations**

- a. Breakdowns - The Customer must notify APS immediately of any breakdown, damage or accident. The Customer is not absolved from his responsibility to safeguard the Equipment by giving such notification.
- b. The Customer is not to undertake any repairs or modifications to the Equipment without APSs written permission. The Customer is not authorised under the Hire Contract to pledge APS's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- c. The Customer shall keep APS notified as to the whereabouts of the Equipment hired at all times.
- d. The Customer is responsible to familiarise himself and ensure compliance with all laws & regulations applicable to the Equipment on Hire including compliance with the Customer's responsibilities under Health and Safety at Work Act 2015.
- e. The Customer acknowledges that it has inspected the Equipment before taking it on Hire, or upon accepting delivery, and shall satisfy himself that the Equipment hired is suitable and sufficient for the work to be done and that he or she can operate it correctly and safely, is properly trained and will comply with all operating instructions and recommendations of the manufacturer. APS gives no warranty and makes no representation as to the suitability of the Equipment for the use intended by the Customer.
- f. Fuels, oils and other consumables are the responsibility of the Customer.
- g. The Customer agrees to pay for all consumables supplied by APS.
- h. Only consumables approved by APS are to be used during the Hire.
- i. The Customer must check and maintain all fuel and oil levels daily before commencing work.
- j. At all times the Customer must keep the Equipment clean and must inspect the Equipment daily before commencing work to ensure it is free of debris or foreign materials (including bird nests) both externally and under the engine hood and external body work. On return of the Equipment any cleaning necessary will be chargeable to the Customer.
- k. If the Customer is providing the operator, the Customer takes responsibility for ensuring that only competent operators with relevant training and licenses use the Equipment.
- l. The Customer will use the Equipment properly and for the purpose for which it was designed and in accordance with manufacturer guidelines/operating manual acknowledging APS gives no warranty as to the Equipment's capacity, condition or state of repair, or suitability for the Customer's purpose and the Customer and shall use the Equipment entirely at his own risk.
- m. The Customer will not sell, offer for sale, mortgage, sublet or assign its interest under the Hire Contract or in the Equipment hired or any part thereof.
- n. The Customer undertakes to keep the Equipment in his possession and control while it is away from APSs premises.
- o. If APS has agreed that the Customer can on-hire the Equipment, the Customer shall take all steps required to protect APS's interest in the Equipment, including, where necessary, registering a financing statement over the Equipment.
- p. The Customer is responsible for arranging, and for meeting any costs of, the return of the Equipment to APS's premises.

## **24. Warranties Excluded**

- a. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon APS which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, APS excludes all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- b. Where you Hire Equipment from us for the purposes of a business: the parties acknowledge and agree that:
  - i. the Customer is hiring the Equipment for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
  - ii. the Equipment is supplied in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
  - iii. the Customer agrees that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

## **25. Damage Waiver Surcharge**

- a. The Customer may elect or APS may require the payment of a damage waiver surcharge. On receipt of this payment APS will indemnify the Customer against liability for any loss or damage to APS's Equipment while on hire.
- b. The damage waiver does not cover:

- i. The first \$2,000.00 of any loss or damage. An additional underage excess shall apply to any driver or person in charge of the Equipment, who is under the age of 25.
  - ii. Misuse, abuse or overloading of any part of the Equipment Hired.
  - iii. Mysterious disappearance or wrongful conversion, including where Equipment is not reasonably locked and secured.
  - iv. Violation of any law or regulation or any work site health and safety protocols and procedures.
  - v. Loss or damage whilst the Customer or person in charge or control of the Hired Property is under the influence of alcohol or any drug, including prescription and over the counter drugs that advise users not to operate machinery after taking them.
  - vi. Damage to tyres and tubes.
  - vii. Damage where the Customer has acted negligently or failed by intent or lack of due care to take all responsible and reasonable precautions to protect the Equipment from loss or damage.
- c. The Customer shall advise APS immediately if the Equipment is lost or damaged.
  - d. The Customer shall not arrange or undertake any repairs or salvage without the authority of APS, unless such repairs or salvage are needed to prevent further damage.

## **26. Title and PPSA**

- a. Title to the Equipment will at all times remain with APS.
- b. Where the Hire Contract creates a security interest in the Equipment for the purposes of the PPSA the Customer acknowledges and agrees that the Customer grants a security interest in the Equipment to APS.
- c. The Customer undertakes to:
  - i. Sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which APS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - ii. Indemnify, and upon demand reimburse APS 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; Take all necessary steps to act in the best interests of APS and to protect APS's security interest in the Equipment.
- d. APS and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- e. The Customer waives his/her or its rights as a debtor under sections 116,120(2),121, 125, 126, 127, 129 and 131 of the PPSA.
- f. The Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

## **PART E - GENERAL TERMS OF SALE OF GOODS AND HIRE**

### **27. Privacy Act 1993**

The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:

- a. collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- b. disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller 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 Customer.
- c. Where the Customer and/or Guarantors are an individual the authorities under clause 29 (a) and (b) are authorities or consents for the purposes of the Privacy Act 1993.
- d. The Customer and/or Guarantors shall have the right to request APS for a copy of the information about the Customer and/or Guarantors retained by APS and the right to request APS to correct any incorrect information about the Customer and/or Guarantors held by APS.

### **28. Events of Default**

All payments shall become immediately due to APS and APS may at its option suspend or terminate these Terms and Conditions of Trade and/or exercise any of the remedies available to it under these Terms and Conditions of Trade in the event that:

- a. a receiver is appointed over any of the assets or undertaking of the Customer;
- b. an application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;
- c. the Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;
- d. the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- e. the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993; or commits any act of bankruptcy.

### **29. Force Majeure**

APS will not be liable to the Customer for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of APS.

### **30. Legal Compliance**

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and/or operation of the Goods or Equipment

### **31. Dimensions and Specifications**

Dimensions and specifications contained or referred to in any Order, catalogues, brochure or other publications maintained or issued by APS are estimates only.

### **32. Changes of Terms**

- a. APS may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- b. The existence of an account by the Customer with APS does not automatically entitle the Customer to credit in the future.
- c. Failure by APS to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights or obligations APS has under these Terms.

- d. APS may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by these Terms or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer fourteen days after the date of delivery of the notice.

**33. Assignment**

- a. The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of APS.
- b. APS is entitled at any time to assign to any other party all or any part of a debt which is owing to APS.
- c. APS may assign its rights and obligations under the Hire Contract to any other person without the consent of the Customer.

**34. Disputes**

- a. In the event of any dispute arising between APS and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- b. In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- c. Nothing in this clause prevents APS from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief or to preserve its rights in any Goods or Equipment supplied.

**35. Notices**

All notices required or committed under these Terms of Trade are to be served as provided in sections 352 to 361 of the Property Law Act 2007 (as applicable), or by email, in which case notice is deemed to be given the day the email was sent, provided the sender requests and receives a confirmatory delivery receipt message, or otherwise when acknowledged by the recipient in writing.

**36. Validity**

If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**37. Entire Agreement**

These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between APS and the Customer.

**38. No Waiver**

No waiver by APS, in exercising any right hereunder shall operate as a waiver of any other right or of that same right at a future time, nor shall any delay in exercise of any power or right be interpreted as a waiver

**39. Other Agreements**

If there is inconsistency between these Terms and any Order submitted by the Customer or any other arrangement between APS and Customer, these Terms prevail unless otherwise agreed in writing by the parties.

**40. Governing Law**

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods.

**CUSTOMER DECLARATION:**

I, \_\_\_\_\_ (name):

- have read, understand and agree to the Terms and Conditions of Trade and Hire;

Signed: \_\_\_\_\_

Company Director / Partner / Proprietor/ Manager

*(Delete inapplicable)*

Title: \_\_\_\_\_

Date \_\_\_\_\_

**GUARANTEE**

The undersigned (together the "Guarantor") Guarantor acknowledges that in consideration of APS agreeing to enter into these Terms with the Customer, the Guarantor unconditionally guarantees to APS the due and punctual payment by the Customer of all moneys as and when the same shall become due and payable by the Customer to APS and the due observance and performance by the Customer of all its obligations under these terms.

Signed: \_\_\_\_\_

\_\_\_\_\_ (name)

Signed: \_\_\_\_\_

\_\_\_\_\_ (name)

Signed: \_\_\_\_\_

\_\_\_\_\_ (name)