

**CERVUS EQUIPMENT NZ LIMITED  
HIRE AGREEMENT  
GENERAL TERMS AND CONDITIONS**

**1.0 INTERPRETATION AND DEFINITION**

1.1 **Agreement** means the Hire Agreement entered into between Cervus Equipment NZ Limited (the **Provider**) and the Hirer and (where applicable) the Guarantor, including the Principal Terms and these General Terms and Conditions and, as applicable, the Guarantee, as all may be amended from time to time.

**Equipment** means each car, truck, utility, tractor, implement or any other equipment set out in the Principal Terms, including any replacements provided.

**Fair Wear and Tear** means such deterioration in the mechanical order of the Equipment as is reasonably consistent with its maintenance in accordance with the manufacturer's instructions while in the Hirer's possession, and such deterioration or blemishes in the appearance of the Equipment as is reasonably consistent with the reasonably intended use of the Equipment by the Hirer. Cuts, tears, burns and ineradicable stains or scratches, dents, grazes or paint discoloration will not be regarded as "Fair Wear and Tear" where repair costs exceed \$500.00.

**Guarantee** means the guarantee provided by the Guarantor named in the Principal Terms.

**Hirer** includes all hirers of the Equipment jointly and severally and its, his, her, or their executors, administrators and permitted assigns.

**Provider** includes the Provider's successors and assigns and all rights, privileges and powers conferred upon the Provider.

1.2 A reference to any statute or regulations means a reference to that statute or regulation together with any amendments.

**2.0 WARRANTIES**

2.1 The Provider makes no warranties or representations, express or implied, as to the quality or fitness for purpose of the Equipment.

2.2 The Hirer acknowledges that the Equipment is supplied to the Hirer for business purposes. Accordingly, and to the extent possible, the provisions of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 are contracted out of or do not apply to the supply of the Equipment under the Agreement.

**3.0 INDEMNITIES AND LIMITATION OF LIABILITY**

3.1 The Hirer will indemnify the Provider on demand from and against all direct loss, liabilities, costs (including solicitor-client costs) arising from (a) any breach of the Agreement by the Hirer; (b) any damage to the Equipment (except Fair Wear and Tear and any pre-existing damage) or to any person or property arising from use of the Equipment; or (c) recovery of amounts otherwise payable by the Hirer to the Provider under this Agreement, except to the extent such loss, liability or damage was caused by breach of the Agreement by the Provider.

3.2 The Provider will have no liability to the Hirer for any amount that exceeds the total rental payments made by the Hirer to the Provider under the Agreement. Under no circumstances will either party be liable to the other for any consequential or indirect loss including loss of profits and/or loss of opportunity.

**4.0 OWNERSHIP OF THE EQUIPMENT**

4.1 The Hirer acknowledges that the Equipment is the property of the Provider and will remain the property of the Provider at all times.

4.2 While in the Hirer's possession, the risk of loss or damage to the Equipment will lie with the Hirer, irrespective that the title to the

Equipment remains with the Provider. The Hirer is responsible for the custody and safekeeping of the Equipment.

4.3 The Hirer will not do or omit to do any act whereby any liens on the Equipment arise and will protect the Equipment from distress execution and seizure. The Hirer will at all times keep the Equipment in its possession or control and will not attempt to sell, pledge, charge, hire out or otherwise deal with the Equipment.

4.4 The Hirer grants the Provider (and others claiming through the Provider) a right of access to the Hirer's premises to inspect the Equipment and, as permitted by the Agreement or by law, take possession of the Equipment.

**5.0 PAYMENTS BY HIRER**

5.1 The Hirer will pay the amount of the rental payments (plus GST at the rate current from time to time) set out in the Principal Terms. Unless agreed in writing otherwise, all rental payments will be made monthly in advance with the first payment being due on the date of the Agreement and thereafter on the corresponding date in each subsequent month.

5.2 All amounts payable by the Hirer under the Agreement must be paid in full on the date due, in cleared funds and to the bank account specified by the Provider from time to time. The Hirer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Provider.

5.3 If the Hirer fails to comply with these terms of payment, then (without prejudice to any other remedies that the Provider may have) the Hirer will pay interest to the Provider at 2% per month calculated day to day for the period that the default continues on for the total of the rental payment that is overdue.

5.4 If:

- the Hirer breaches or otherwise fails to perform any of its obligations under the Agreement; or
- the Provider considers it reasonably necessary or desirable to pay any money or incur any expenses (whether in respect of the repossession of any Equipment or otherwise) in order to protect its interest under the Agreement,

then the Provider may, without affecting any other rights it may have, perform such obligation, pay such money, or incur such expenses and any moneys reasonably paid or expenses reasonably incurred by the Provider for such purposes will be payable by the Hirer to the Provider upon demand by the Provider.

**6.0 PROVIDER'S SECURITY INTEREST**

6.1 The Hirer grants the Provider a continuing security interest in the Equipment and all the Hirer's present and future rights in relation to the Equipment and all proceeds, as security for payment of all amounts the Hirer owes to the Provider and the performance of all the Hirer's obligations under the Agreement (**Provider's Security Interest**).

6.2 The Hirer will not grant or allow to exist any security interest in relation to the Equipment that competes with the Provider's Security Interest.

6.3 On the Provider's request, the Hirer must (at the Hirer's sole expense) properly execute any documents, provide all necessary information, and do anything else required by the Provider to ensure that the Provider's Security Interest constitutes a perfected security interest in the Equipment and any subsequent proceeds. The Hirer agrees that the Provider may register a financing statement to protect its security

interest, and that the Hirer will not change its name or other details without notifying the Provider in writing at least 14 days before the change takes effect.

6.4 The Hirer also agrees:

- that nothing in sections 114(1)(a), 116, 120(2), 133 and 134 of the Personal Property Securities Act 1999 (PPSA) will apply to the Agreement or the Provider's Security Interest;
- to waive all its rights under sections 117(1), 119, 121, 125, 126, 127, 129, 131, 132 and 133 of the PPSA; and
- to waive its right to receive a copy of the verification statement under the PPSA.

## 7.0 INSURANCE

7.1 The Provider will insure, and keep insured at all times during the term of the Agreement, the Equipment against loss by fire, theft and accident. The Provider will not insure against (or be responsible for) third party losses arising from action or inaction by the Hirer. The Hirer must take out and maintain for the duration of the Agreement third party liability insurance with a reputable insurer with appropriate levels of cover.

7.2 If the Provider is required to claim under its own insurance policies in respect of any action or inaction by the Hirer, the Hirer acknowledges that its liability to the Provider under this Agreement will include the full amount any excess payable by the Provider.

## 8.0 DAMAGE

8.1 The Hirer must notify the Provider immediately following any accident, or any mechanical or other damage to the Equipment. The Hirer must also provide a written record of the circumstances in which the accident or damage arose.

8.2 Subject to clause 7 (Insurance), the Hirer will pay all costs arising from any repairs to the Equipment arising from the use of the Equipment by the Hirer, provided that the Hirer will not be liable for Fair Wear and Tear.

8.3 The Hirer will not undertake any repairs to the Equipment without the Provider's prior written consent, except to the extent that any repairs are necessary to prevent further damage to the Equipment. If it is necessary for the Equipment to be replaced while any such repair work is carried out, the Hirer will pay the costs of such replacement Equipment. The Hirer will remain liable for all amounts payable in respect of the original Equipment.

## 9.0 MAINTENANCE

9.1 The Provider will carry out, and meet the costs of, all routine maintenance in respect of the Equipment. The Hirer will either deliver the Equipment to the site nominated by the Provider for required maintenance or, at the Provider's option, allow the Provider and any person authorised by the Provider reasonable access to the Equipment from time to time for the purpose of testing, inspecting and servicing the Equipment.

9.2 Except as provided for during routine maintenance referred to above, the Hirer will be responsible for the cost of all fuel, oil, batteries and other consumables relating to the Equipment. The Hirer will ensure that the fuel, oil, batteries, radiator and battery fluids, engine coolants or lubricants and the like, and tyre pressures, are maintained to the levels stipulated by the Equipment manufacturer.

## 10.0 USE OF EQUIPMENT

10.1 The Hirer will ensure that the Equipment is operated only by the Hirer (if the Hirer is a natural person), the trustees (if the Hirer is a trust) or the Hirer's directors (if the Hirer is a company), or by the Hirer's employees in the course of their employment, and by no other persons. Breach of this requirement will entitle the Provider to terminate the Agreement immediately.

10.2 The Hirer will also ensure that the Equipment is operated and stored only at the address shown in the Principal Terms or such other premises approved by the Provider in writing. The Hirer

will promptly give written notice to the Provider of any change of address. If any Equipment or part of any Equipment is removed, seized or taken out of the possession of, or withheld from the Hirer, the Hirer will promptly give written notice to the Provider of the address of the place where the Hirer believes the Equipment may be and the name of the person who has possession of the Equipment or part of it.

10.3 The Hirer will use, operate and store the Equipment, and ensure the use, operation and storage of the Equipment, in a careful, prudent and lawful manner and in accordance with all relevant legislation, by-laws and regulations affecting the Equipment or the use or possession of it. The Hirer will ensure that the Equipment, if a vehicle, is driven only by persons who hold a valid driver's license appropriate to that vehicle.

10.4 The Hirer will ensure that at all times the Equipment is used solely for the purpose intended by the manufacturer, having regard to the design and load capabilities and limitations and in accordance with the manufacturer's instructions and the rated capacity of the Equipment.

10.5 The Hirer will not interfere in any way with the engine, transmission or braking systems, odometer, speedometer or engine hour meter of the Equipment, or disconnect the same, and the Hirer shall give the earliest possible notice to the Provider of any damage or defect in the above. The Hirer will, whenever required, advise the Provider of the odometer reading or engine hour meter reading.

10.6 The Hirer will pay all parking and other traffic and road user-related fines and penalties, including any additional collection costs arising in relation to the Equipment promptly and in the manner required by the relevant authority.

10.7 The Hirer will not without the Provider's prior written consent (and subject to such conditions as the Provider may impose) alter, modify or add to any Equipment, or attach in any way any identifying number or mark or notice of ownership and in particular will not alter the external appearance of the Equipment in any way by repainting or by any other means.

## 11.0 DEFAULT AND REPOSSESSION OF EQUIPMENT

11.1 If any one or more of the events listed in clause 11.2 below (**Default Event**) occurs, the Provider may (without affecting any other rights it may have):

- without prior notice to the Hirer (and whether or not the Provider may subsequently accept any moneys paid by the Hirer) retake possession of the Equipment and for that purpose may by its officers or agents enter, where necessary by force, on any property occupied by the Hirer, and (as the agent of the Hirer) on any other property occupied where the Equipment may be or be supposed to be; and/or
- by notice in writing to the Hirer terminate the Agreement as at the date of the notice or any later date, specified in the notice and if the Provider exercises either or both of its rights under this clause the balance of the moneys payable by the Hirer under the Agreement shall at the option of the Provider immediately become due and payable to the Provider, subject to such rebate of rental payments as the Provider may allow and all reasonable costs of repossession will be paid by the Hirer to the Provider on demand.

11.2 A Default Event will occur if any of the following happens:

- The Hirer fails to pay any money payable under the Agreement within 14 days after a notice from the Provider to do so following the due date.
- The Hirer fails to comply with any other express provision of the Agreement within 14 days after a notice from the Provider to do so.
- If distress or execution is levied against the Equipment.
- If at any time any judgment of any court against the Hirer remains unsatisfied for more than seven days.

- If any lien is unlawfully claimed over the Equipment.
- The Hirer commits any act of bankruptcy or becomes insolvent.
- If a receiver is appointed in respect of any assets of the Hirer.
- If a resolution is passed for the winding up of the Hirer or if a petition is made to the Court for winding up.
- If the Hirer makes an assignment to or composition with any creditor.

## 12.0 TERMINATION

12.1 The Agreement will commence on the Commencement Date and will expire on the Termination Date (as each is described in the Principal Terms). The Hirer may not terminate the Agreement before the Termination Date.

12.2 Upon termination of the Agreement:

- the Hirer's right to possession of the Equipment will cease; and
- the Hirer will immediately deliver the Equipment to the Provider or make, at the cost of the Hirer, the Equipment immediately available for collection by the Provider as instructed by the Provider. The Equipment will be returned in as good mechanical working order, repair, condition and appearance as it was when delivered to the Hirer, except any Fair Wear and Tear.

12.3 Any deterioration of or damage to the Equipment being returned, in excess of Fair Wear and Tear, will be remedied as soon as possible by the Provider at the Hirer's expense. The Hirer will pay the cost of such remedial work to the Provider upon demand.

12.4 Termination will not affect any claim by either party against the other arising out of any breach of the Agreement prior to termination.

## 13.0 AMENDMENT AND ASSIGNMENT

13.1 The Provider may, at its discretion, vary the General Terms and Conditions from time to time.

13.2 The Provider may assign any or all of its right, title and interest in any Equipment and under the Agreement at any time. The Hirer will, on notice, make all payments due under the Agreement to any such assignee. The Hirer may not assign any of its rights under the Agreement and the Provider may immediately terminate the Agreement if there is any such purported assignment.

## 14.0 DISPUTE RESOLUTION

14.1 If a dispute arises out of or relates to the Agreement (**Dispute**), the parties will (except where a party seeks urgent interlocutory relief) comply with this clause 14 before commencing any formal dispute resolution proceeding.

14.2 The party claiming that a Dispute has arisen under or in relation to the Agreement must give written notice to the other party specifying the nature of the Dispute (a **Dispute Notice**). Within 14 days of receipt of a Dispute Notice, the parties must meet and will actively, openly and in good faith discuss the Dispute with a view to resolving the Dispute by discussion, consultation, negotiation or other informal means.

14.3 Notwithstanding the existence of a Dispute, the parties must continue to perform their obligations under the Agreement including the payment of all monies owing (provided that the sum required to be paid is not in dispute).

## 15.0 PRIVACY

15.1 The Provider may collect personal information, including the name and email address of the Hirer for the purposes of fulfilling its obligations under the Agreement and otherwise for the purposes described in it.

15.2 The Provider will not disclose any personal information to any third party, except:

- for the purposes of performing any of the obligations of the Provider under the Agreement, including obtaining a credit report from a credit reporting agency;
- as authorised by the Hirer;
- to any financier of the Provider and/or of the Equipment; or
- as required or permitted under any applicable law, regulation, legal process or government request (including for the purposes of credit reporting in accordance with relevant credit reporting law).

15.3 Any personal information provided will be held by the Provider in accordance with any applicable privacy laws. To access the information held by the Provider, the Hirer may contact the Provider at the address set out in the Principal Terms. The Hirer may request a correction or an update to the information held by the Provider, and the Provider will either correct the information or note the correction requested.

## 16.0 FORCE MAJEURE

16.1 If the Equipment (including any replacement Equipment provided) is destroyed or damaged by fire, earthquake or accident such that the Equipment is written off without the fault of the Hirer or the Provider, the Provider may at its option either provide replacement Equipment or by notice in writing immediately terminate the Agreement.

## 17.0 HEALTH AND SAFETY

17.1 The Hirer warrants that it is and will continue to be fully compliant with its obligations under the Health and Safety at Work Act 2015 (including any applicable regulations or codes of practice made under that Act) and any substituting or amending legislation. The Hirer indemnifies the Provider against liability for any direct, indirect or consequential injury, loss or damage arising out of any breach of its Health and Safety obligations.

## 18.0 GENERAL

18.1 If one or more of the provisions of the Agreement is held to be unenforceable, void or prohibited then the Agreement shall be construed as if such provision had been deleted from it prior to it being signed by the parties and all other provisions shall remain in full force and effect.

18.2 The Agreement sets out the whole arrangement between the Hirer and the Provider in relation to the supply of the Equipment. No other representations, terms or conditions will apply except as set out in the Agreement.