

SJ Allen Holdings Limited - Terms & Conditions

- 1. Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "SJ Allen Holdings" shall mean SJ Allen Holdings Limited, its successors and assigns.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the SJ Allen Holdings to provide the Equipment for hire as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by the SJ Allen Holdings to the Customer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on 7.3 the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the SJ Allen Holdings to the Customer.
- 1.5 "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 the SJ Allen Holdings to the Customer.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Price" shall mean the cost of the hire of the Equipment (plus any Goods and Services Tax ("GST") where applicable) as 7.4 agreed between the SJ Allen Holdings and the Customer in accordance with clause 3 of this Contract.
- 2. Acceptance**
- 2.1 The parties acknowledge and agrees that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
- (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule 7.7 that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3. Price and Payment**
- 3.1 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation, or any other order 8.1 forms. If no time is stated, then payment will be due seven (20) days following the date of the invoice.
- 3.2 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the 8.2 Customer by the SJ Allen Holdings nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.3 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the SJ Allen Holdings.
- 4. Equipment Hire**
- 4.1 The Equipment shall at all times remain the property of the SJ Allen Holdings and is returnable on demand by the SJ Allen Holdings. In the event that the Equipment is not returned to the SJ Allen Holdings in the condition in which it was delivered the SJ Allen Holdings retains the right to charge the Price of repair or replacement of the Equipment.
- 4.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment, pledge the SJ 9.1 Allen Holdings' credit for repairs to the Equipment, nor be entitled to take a lien over the Equipment.
- (b) 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.
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with 9.2 any maintenance schedule as advised by the SJ Allen Holdings to the Customer.
- 4.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the SJ Allen Holdings' interest in the Equipment and agrees to indemnify the SJ Allen Holdings 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 effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 4.4 Notwithstanding the above clause, immediately on request by the SJ Allen Holdings the Customer will pay:
- (a) any lost hire charges the SJ Allen Holdings would have otherwise been entitled to for the Equipment, under this, or any 9.3 other hire agreement;
- (b) any insurance excess payable in relation to a claim made by either the Customer or the SJ Allen Holdings in relation to 9.4 any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether 9.5 charged by the Customer's insurers or the SJ Allen Holdings'.
- 4.5 Return of the Equipment ("Return") will be completed when the:
- (a) Equipment is returned by the Customer to the SJ Allen Holdings' place of business; or
- (b) the SJ Allen Holdings takes back possession of the Equipment once collection by the SJ Allen Holdings is affected.
- 5. Default & Consequences of Default**
- 5.1 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 the SJ Allen Holdings' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 5.2 If the Customer owes the SJ Allen Holdings any money the Customer shall indemnify the SJ Allen Holdings from and against all costs and disbursements incurred by the SJ Allen Holdings in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the SJ Allen Holdings' collection agency costs, and bank dishonour fees).
- 5.3 Further to any other rights or remedies the SJ Allen Holdings may have under this Contract, if a Customer has made payment to the SJ Allen Holdings, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the SJ Allen Holdings under this clause 5 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 6. Cancellation**
- 6.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Equipment on hire to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 6.2 If the SJ Allen Holdings, due to reasons beyond the SJ Allen Holdings' reasonable control, is unable to deliver any Equipment to the Customer, the SJ Allen Holdings may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the SJ Allen Holdings shall repay to the Customer any sums paid in respect of the Price. The SJ Allen Holdings shall not be liable for any loss or damage whatever arising from such cancellation.
- 6.3 The Customer wishes to cancel Delivery of the Equipment and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Equipment and/or Services shall place the Customer in breach of this Contract.
- 7. Privacy Policy**
- 7.1 All emails, documents, images or other recorded information held or used by the SJ Allen Holdings is Personal Information as defined and referred to in clause 7.3 and therefore considered confidential. The SJ Allen Holdings acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The SJ Allen Holdings acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the SJ Allen Holdings that may result in serious harm to the Customer, the SJ Allen Holdings will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 7.2 Notwithstanding clause 7.1, privacy limitations will extend to the SJ Allen Holdings in respect of cookies where the Customer utilises the SJ Allen Holdings' website to make enquiries. The SJ Allen Holdings agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the SJ Allen Holdings when the SJ Allen Holdings sends an email to the Customer, so the SJ Allen Holdings may collect and review that information ("collectively Personal Information")
- If the Customer consents to the SJ Allen Holdings' use of cookies on the SJ Allen Holdings' website and later wishes to withdraw that consent, the Customer may manage and control the SJ Allen Holdings' privacy controls via the Customer's web browser, including removing cookies by deleting them from the browser history when exiting the site.**
- The Customer authorises the SJ Allen Holdings or the SJ Allen Holdings' agent to:
- (a) access, collect, retain and use any information about the Customer:
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by the SJ Allen Holdings from the Customer directly or obtained by the SJ Allen Holdings 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.
- Where the Customer is an individual the authorities under clause 7.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 7.5 The Customer shall have the right to request (by e-mail) from the SJ Allen Holdings, a copy of the Personal Information about the Customer retained by the SJ Allen Holdings and the right to request that the SJ Allen Holdings correct any incorrect Personal Information.
- 7.6 The SJ Allen Holdings will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- The Customer can make a privacy complaint by contacting the SJ Allen Holdings via e-mail. The SJ Allen Holdings will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 8. Title**
- 8.1 The Equipment shall at all times remain the property of the SJ Allen Holdings and is returnable on demand by the SJ Allen Holdings.
- If the Customer fails to return the Equipment to the SJ Allen Holdings then the SJ Allen Holdings or the SJ Allen Holdings' agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 8.3 In the event that the Equipment is not returned to the SJ Allen Holdings in the condition in which it was delivered the SJ Allen Holdings retains the right to charge the Customer the full cost of repairing the Equipment. In the event Equipment is not returned at all and the SJ Allen Holdings is unable to repossess the Equipment as per clause 8.2 then the SJ Allen Holdings shall have right to charge the Customer the full cost of replacing the Equipment.
- 9. Personal Property Securities Act 1999 ("PPSA")**
- Upon assenting to these terms and conditions in writing the Customer 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 that have previously been supplied and that will be supplied in the future by the SJ Allen Holdings to the Customer, and the proceeds from such Equipment as listed by the Customer to the SJ Allen Holdings in invoices rendered from time to time.
- The Customer 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 SJ Allen Holdings may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the SJ Allen Holdings for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment or the proceeds of such Equipment in favour of a third party without the prior written consent of the SJ Allen Holdings.
- Unless otherwise agreed to in writing by the SJ Allen Holdings, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- The Customer shall unconditionally ratify any actions taken by the SJ Allen Holdings under clauses 9.1 to 9.3.
- Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 9.6 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 9 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 9 will apply generally for the purposes of the PPSA.
- 10. Security and Charge**
- 10.1 In consideration of the SJ Allen Holdings agreeing to supply Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 10.2 The Customer indemnifies the SJ Allen Holdings from and against all the SJ Allen Holdings' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the SJ Allen Holdings' rights under this clause.
- 10.3 The Customer irrevocably appoints the SJ Allen Holdings and each director of the SJ Allen Holdings as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
- 11. General**
- 11.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.2 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.
- 11.3 Subject to the CGA, the liability of the SJ Allen Holdings and the Customer under this Contract shall be limited to the Price.
- 11.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the SJ Allen Holdings, following cessation of a Force Majeure.
- 11.5 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.