

1 Basis of contract

These Terms apply to the Contract to the exclusion of any other terms you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2 Hire period

The hire of the Equipment starts on the commencement date and continues for the period in each case set out in the Order (or for such other period as we and you agree), unless the Contract is terminated earlier in accordance with its terms.

3 Rental

1.1 Our rental for the hire of the Equipment is set out in the Order. We will continue to charge you rental after the end of the Hire Period until the Equipment is redelivered to us.

1.2 Unless otherwise agreed in writing, the rental is exclusive of GST, which will be charged to you at the prevailing rate.

1.3 We sometimes ask for a deposit against default in payment of any rental or any loss of or damage caused to the Equipment. If a deposit is set out in the Order, you must pay the deposit to us on the date of the Contract. If you fail to make any rental payment or cause any loss or damage to the Equipment, we may apply the deposit against such default, loss or damage. You must pay to us any sum deducted from the deposit within 10 days of our demand. The deposit (or balance of it) is refundable following your payment of our final invoice.

4 Payments

4.1 We will invoice you monthly. Our invoices must be paid in full, without deduction or set-off, by the 20th of the month following the date of invoice. Your payment is made only when funds have been fully cleared through the bank's system into our bank account.

4.2 If full payment is not made by the due date, then without prejudice to our rights under clause 9.1 below:

- (a) we may charge interest on overdue moneys on a daily basis at 5% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment; and
- (b) you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such moneys.

5 Delivery

5.1 Unless otherwise agreed, we shall deliver the Equipment to you. We will make every effort to deliver the Equipment by any date or time agreed with you. However, we shall not be liable to you for any failure to deliver it as agreed, however the failure was caused.

5.2 You must ensure that your duly authorised representative will be present at delivery. Acceptance of delivery by that representative will constitute conclusive evidence that you have examined the Equipment and found it to be in good condition, complete and fit in every way for the purpose intended.

6 Title, risk and insurance

6.1 The Equipment shall at all times remain our property, and you shall have no right, title or interest in or to the Equipment (except for the right to possession and use of the Equipment under the Contract).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to you on delivery. The Equipment shall remain at your risk during the Hire Period and any further term during which the Equipment is in your possession, custody or control until such time as the Equipment is redelivered to us. You will also be responsible for all loss or damage caused by the Equipment during this time.

6.3 You must give us immediate written notice in the event of any loss, accident or damage to the Equipment or arising out of or in connection with your possession or use of the Equipment.

7 Your responsibilities

7.1 You must during the term of the Contract:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by us;
- (b) ensure any staff who operate the Equipment hold all necessary licences and permits and are not under the influence of alcohol or any drug;
- (c) take such steps (including compliance with all safety and usage instructions provided by us) as may be necessary to ensure, so far as reasonably practicable, that the Equipment is at all times safe and without risk to health;
- (d) maintain at your expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was at the start of the hire period (fair wear and tear excepted);
- (e) make no alteration to the Equipment and not remove any existing component(s) from the Equipment;
- (f) keep us fully informed of all material matters relating to the Equipment;
- (g) at all times keep the Equipment in your possession or control and keep us informed of its location;
- (h) permit us or our duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and grant reasonable access and facilities for that inspection;
- (i) not, without our prior written consent, part with control of, sell or offer for sale, underlet or lend the Equipment or allow the creation of any security interest in respect of it;
- (j) not suffer or permit the Equipment to be confiscated, seized or taken out of your possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, you must notify us, and, at your sole expense, use your best endeavours to procure an immediate release of the Equipment and indemnify us on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (k) not use the Equipment for any unlawful purpose and, where necessary, obtain any licences or permits required for its intended use;
- (l) ensure that at all times the Equipment remains identifiable as being our property and, wherever possible, ensure that a visible sign to that effect is attached to the Equipment;
- (m) deliver up the Equipment at the end of the Hire Period or on earlier termination of the Agreement at such address as we require in a clean condition and, if relevant, full of fuel; and
- (n) not do or permit to be done anything which could invalidate any insurances effected by us in relation to the Equipment.

7.2 You agree to indemnify us, on demand, against any costs, claims, demands, actions and liabilities incurred by us arising out of any failure to comply with your obligations under clause 7.1.

8 Warranty and liability

8.1 We warrant to you that the Equipment shall be of satisfactory quality and fit for any purpose held out by us.

8.2 We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or indirect or consequential loss arising under or connection with the Contract. Our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed \$[10,000].

8.3 The Contract sets out the full extent of our obligations and liabilities in respect of the Equipment and its hiring to you. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever that are binding on us except as specifically stated in

the Contract. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

9 Termination

9.1 We may, without prejudice to any other right or remedy which may be available to us, terminate the Agreement immediately by written notice to you if you default in any of your payment or other obligations under the Contract, become insolvent or commit any act of bankruptcy, a receiver, liquidator, administrator or statutory manager is appointed over any of your assets or undertaking or you make or attempt to make an arrangement or composition with your creditors.

9.2 The Contract shall automatically terminate if the Equipment is, in our reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

9.3 Upon termination of the Contract, however caused, our consent to your possession of the Equipment shall terminate and we may, by our authorised representatives, without notice and at your expense, retake possession of the Equipment and for this purpose enter any premises at which the Equipment is located.

10 Force majeure

We shall not be liable for any failure or delay in performing our obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond our reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, and includes strikes, lock-outs or other industrial disputes and defaults of suppliers or subcontractors.

11 General terms

11.1 **Assignment:** You may not assign the benefit or burden of the Contract without our prior written consent.

11.2 **Notices:** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid fastpost, commercial courier, facsimile or email. A notice or other communication shall be deemed to have been received (i) if delivered personally, when left at the address referred to in this clause, (ii) if sent by pre-paid fastpost, at 9:00am on the second working day after posting, (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or (iv) if sent by fax or email, one working day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 **Waiver:** No delay or failure by us to exercise our rights under the Contract operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.

11.4 **Severability:** If a court decides that part of the Contract is unenforceable, the part concerned shall be deleted from the rest of the Contract, which will then continue in force.

11.5 **Amendments:** We may amend these Terms from time to time by notice to you in writing.

11.6 **Law:** The Contract will be interpreted in accordance with and governed by the laws of New Zealand, and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

12 Defined Terms and Interpretation

12.1 In these terms and conditions, the following words have the following special meanings:

"**Contract**" means the contract between us and you for the hire of Equipment in accordance with these Terms;

"**Equipment**" means the equipment set out in the Order, together with all substitutions, replacements and renewals of such equipment and all related accessories, manuals and instructions provided for it;

"**Hire Period**" means the period of hire as set out in clause 2;

"**Order**" means [your order for the hire of the Equipment, as set out in the order form generated by us and agreed by your representative];

"**Terms**" means these terms and conditions (as amended from time to time);

"**we**", "**our**", "**us**", means Spray Marks Road Marking Limited, Advanced Maintenance Ltd, Roadmarkers Otago Ltd and any of its related companies (as defined in the Companies Act 1993) from time to time; and

"**you**" means the customer who hires the Equipment from us.

12.2 For convenience, these standard terms and conditions have been grouped under different headings, but the headings do not affect the meanings of them.