

# VYNCO – HIRE TERMS AND CONDITIONS

<b>1.</b>	<b>Definitions</b>		
1.1	In these Terms & Conditions the following terms have the meaning set out below. Any capitalised term not defined below has the meaning given to it in the Main Terms:		
1.1.1	"Goods" means the equipment provided by Vynco to the Customer set out in the Main Terms.	5.3.1	the Customer will be in default under this Contract and Vynco may exercise all of the rights and remedies set out in this Contract and otherwise available at law; and
1.1.2	"Main Terms" means the first section of this Contract setting out the main terms of this Contract, including the details of the Customer and the Hire Charges.	5.3.2	the Customer will pay interest on the default monies at the rate of 2% per month above Vynco's overdraft rate payable on a daily basis from the due date; and
1.1.3	"PPSA" means the Personal Property Securities Act 1999.	5.3.3	the Customer will be liable for all expenses (including solicitor - own client legal costs) incurred by Vynco as a result of the default; and
1.1.4	"Price" means the Hire Charge set out in the Main Terms plus any additional charges pursuant to these Terms & Conditions, plus goods and services tax or, where no Hire Charge is stated in writing, the Goods shall be deemed to be hired at the current price that such Goods are hired by Vynco at the time the relevant order is accepted.	5.3.4	Vynco may withhold the further supply of Goods. Vynco's Credit Terms and Conditions shall apply to credit account customers.
1.1.5	"quote" means any quotation or estimate provided by or on behalf of Vynco to the Customer and attached to this Contract as a Schedule.	5.4	
1.1.6	"Secured Items" has the meaning given to that term in clause 9.5.	6.	<b>Validity of Payment</b>
2.	<b>Acceptance of Terms and Conditions</b>	6.1	The Customer acknowledges that:
2.1	Contracting Vynco to hire the Goods or acceptance of a quote provided by Vynco constitutes acceptance by the Customer of these Terms & Conditions.	6.1.1	all payments made by the Customer to Vynco are in the ordinary course of the Customer's business;
2.2	Vynco reserves the right to change these Terms & Conditions without notice. Any amended Terms & Conditions will be placed on Vynco's website and shall apply with effect from the date on which they are placed on the website.	6.1.2	all payments by the Customer are received by Vynco on the reasonably held belief that those payments are valid unless the Customer advises otherwise in writing; and
3.	<b>Price</b>	6.1.3	by accepting any payments from the Customer on or after the due date for payment Vynco has altered its position in reliance on the validity of those payments.
3.1	All Goods are supplied at the Price.	7.	<b>Warranty by Vynco</b>
3.2	The Customer agrees that Vynco may charge extra on a pro rata basis for any equipment usage in excess of the agreed hire periods.	7.1	Vynco makes no warranty or representations as to the state, quality or fitness of the Goods for any purpose and no such warranty shall be implied.
3.3	There is a minimum hire period of 24 hours for all Goods. The Customer shall not be entitled to a refund or reduced hire period if the Customer chooses to return the Goods prior to expiry of the hire period.	7.2	All warranties expressed or implied are strictly conditional upon full payment of the Price having been received by Vynco.
3.4	The Price is quoted exclusive of goods and services tax ( <b>GST</b> ) unless otherwise stated.	7.3	Vynco's obligations under any implied statutory warranty extend only to the repair or replacement of defective goods and under no circumstances whatsoever is Vynco to be liable for any loss, damage or wastage or other consequential loss occasioned through any defect in the Goods or provision of services nor shall Vynco be liable for any of the following:
4.	<b>Hire Period</b>	7.3.1	damage due to normal wear and tear;
4.1	The hire period commences from the time that the Goods leave Vynco's premises and expires when the Goods are returned to Vynco's premises or if earlier the date on which the Contract is terminated pursuant to clause 15.	7.3.2	damage resulting from any act of vandalism or accident, including collision with any object;
4.2	If the Customer wishes to cancel this Contract it is to provide at least 48 hours' prior notice to Vynco. If less than 48 hours' notice is provided, the Customer shall be liable to pay a penalty fee equal to one day's Hire Charges plus GST.	7.3.3	damage resulting from lack of reasonable maintenance, improper maintenance, non-user maintenance or relocation of Goods, by any person other than Vynco;
4.3	The Goods are to be collected by the Customer between midday and 4pm on the working day prior to commencement of the Hire Period.	7.3.4	damage resulting from improper use of the Goods, exceeding the reasonable limits of the Goods, or using the Goods with a known fault;
4.4	The Goods are to be returned by the Customer by 9am on the working day following expiry of the Hire Period.	7.3.5	damage resulting from any modifications made to the Goods, use of parts not originally provided or approved by Vynco, or resulting from opening any part of the Goods not intended to be accessible for user maintenance; and
5.	<b>Payment</b>	7.3.6	any loss, damage or wastage or other indirect or consequential loss occasioned or damage for any loss of revenue or loss of actual or anticipated profit through any defect in the Goods or provision of services.
5.1	The Price (hire charge) shall be paid by the Customer prior to collection or delivery of the Goods unless otherwise agreed in writing by Vynco.	7.4	Vynco shall provide its obligations under these Terms & Conditions in a proper and businesslike manner.
5.2	In addition to the Price, the Customer shall pay the following charges:	8.	<b>Liability on Claims</b>
5.2.1	a bond of 150% of the Price;	8.1	Subject to clause 7 and unless otherwise agreed in writing by Vynco, all claims against Vynco by the Customer must be made within 10 working days of completion of delivery of Goods to the satisfaction of Vynco (including any sign off by the Customer). Vynco reserves the right in its discretion to repair or replace Goods or to credit the portion of the Price applicable to such Goods and services in respect of any claims accepted by Vynco. Vynco will use its reasonable endeavours to enforce any guarantees or warranties given by the manufacturer of Goods supplied by Vynco.
5.2.2	delivery/removal charges (if applicable);	8.2	The total liability of Vynco for any loss arising from any defect or non-compliance of the Goods or any other breach by Vynco of its obligations under this Contract or on any other ground or terms whatsoever (including liability as a result of tort, including negligence) will not in any circumstances exceed the Price paid by the Customer to Vynco.
5.2.3	excess use charges (if applicable);	8.3	Vynco will not be liable for:
5.2.4	cost of repair or replacement of any Goods due to damage or loss of any of the Goods (if applicable);	8.3.1	any consequential indirect or special damage or loss of any kind including loss of profit;
5.2.5	cleaning fees (if applicable);	8.3.2	the death or injury of the Customer or its servants, agents or other persons in relation to the use of the Goods; or
5.2.6	default interest for late payment		
5.3	<b>(Additional Charges).</b> If full payment of the Price or the Additional Charges is not made by the Customer to Vynco in accordance with clauses 5.1 and/or 5.2 then:		

	8.3.3	any loss caused, whether in whole or in part, by the Customer's servants, agents or any other person.	
8.4		The Customer will indemnify Vynco against any claim by the Customer's servants, agents or other persons in respect of any loss arising from any defect in or non-compliance of the Goods or in respect to any other matter whatsoever.	
9.		<b>Ownership</b>	
9.1		Property in and ownership of the Goods remains in Vynco at all times.	
9.2		The Customer is a fiduciary for Vynco and has a fiduciary duty to account to Vynco for the Goods. If the Goods are sold, the Customer receives the proceeds of sale as a trustee for Vynco and will place the proceeds of the sale in a separate bank account for the benefit of Vynco. The Customer has no right to assert against Vynco that it owns the Goods or the proceeds of sale of the Goods or any part of them.	
9.3		For the purposes of clause 9.2, if the Goods become mixed with or incorporated in any goods, property or materials of the Customer or any other person in such a way that they cease to exist as separate items, the original ownership of the new goods created by that mixing will vest immediately on creation in Vynco as co-owner of the new goods with the owner of any other materials which become part of the new goods. The co-ownership will be calculated proportionally to the value of the various component materials. Vynco's ownership of the new goods is otherwise on the same terms as the ownership of the Goods originally supplied.	
9.4		If the Customer fails, or is likely (in the opinion of Vynco) to fail, to perform any of its obligations under this Contract (including failure to pay the Hire Charge in accordance with this Contract) or if one of the events described in clause 15.1.2 occurs, the Customer will at Vynco's request:	
	9.4.1	return the Goods to Vynco or do anything reasonably necessary to allow Vynco to retake possession of them; and	
	9.4.2	instruct any third parties who owe money to the Customer in respect of the Goods to pay that money directly to Vynco; and	
	9.4.3	make any records available to Vynco which may assist Vynco to trace the proceeds of sale of the Goods.	
9.5		The Customer acknowledges that this Contract constitutes a security agreement which creates a security interest in favour of Vynco in:	
	9.5.1	the Goods;	
	9.5.2	any new goods in terms of clause 9.3; and	
	9.5.3	any other Goods, other goods or personal property owned by the Customer that have been installed or worked on by Vynco.	
		<b>(Secured Items)</b>	
9.6		The Customer shall not agree to allow any person to file a financing statement over the Secured Items without the prior written consent of Vynco and shall notify Vynco immediately if it becomes aware of any person taking steps to file a financing statement against any of the Secured Items.	
9.7		The Customer agrees that nothing in sections 114(1)(a), 133, and 134 of the PPSA will apply to this Contract and waives its rights under sections 121, 125, 129, 131 and 148 of the PPSA.	
9.8		While the Customer owes any money to Vynco:	
	9.8.1	the Secured Items will not become fixtures on any land, regardless of the degree to which and purpose for which they are fixed to the land (subject to the prior rights of any mortgagee of the land); and	
	9.8.2	the Customer agrees to grant a purchase money security interest ( <b>PMSI</b> ) in the Secured Items and all future Goods supplied to the Customer by Vynco. The Customer agrees that the PMSI has attached to all Goods now or in the future supplied to the Customer by Vynco.	
9.9		If the Customer fails, or is likely (in the opinion of Vynco) to fail, to perform any of its obligations (including failure to pay the Hire Charge in accordance with this Contract) or if one of the events described in clause 15.1.2 occurs, then Vynco will be entitled without notice to repossess the Secured Items. The Customer authorises Vynco or its representatives, servants, agents or employees to enter the property where the Secured Items are situated for the purpose of repossession. Vynco will not be liable for any costs, expenses, damage, loss of any kind suffered by the Customer as a result of repossession of any of the Secured Items.	
9.10		If Vynco takes possession of the Secured Items or the proceeds of sale of any of the Secured Items and after deduction of all money the Customer owes to Vynco (including any interest due and including any expense occurred by Vynco in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, Vynco will pay that surplus to the Customer.	
	10.	<b>Consumer Guarantees Act</b>	
	10.1	Where Vynco is supplying the Goods to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993 ( <b>CGA</b> ), pursuant to Section 43 of the CGA the provisions of the CGA will not apply to this Contract.	
	10.2	Where Vynco is supplying Goods to the Customer other than for business purposes the provisions of clauses 7 and 8 will have no effect to the extent such provisions conflict with Vynco's obligations under the CGA and the provisions of the CGA will apply.	
	10.3	Where the Customer supplies Goods to which the CGA applies pursuant to this Contract on to a person acquiring them for business purposes, it must be a term of the Customer's contract with the buyer of such Goods that such Goods are not subject to the provisions of the CGA.	
	11.	<b>Information and Privacy Act</b>	
	11.1	For the purpose of facilitating the efficient running of Vynco's business, the Customer authorises Vynco:	
	11.1.1	to collect all information it may require from any third parties and authorises those third parties to release that information to Vynco; and	
	11.1.2	to hold all information given by the Customer or any third parties to Vynco; and	
	11.1.3	to use that information, including giving information to any other person to facilitate collection of debts from the Customer;	
	11.2	The information will be collected, held and used on the condition that:	
	11.2.1	it will be held securely at Vynco's premises; and	
	11.2.2	it will be accessible to any of Vynco's employees and agents who need access to it for the efficient running of Vynco's business; and	
	11.2.3	the Customer may request access to and correction of the information at any time.	
	12.	<b>Collection &amp; Risk</b>	
	12.1	Any delivery and removal charges are payable by the Customer and are additional to the Price.	
	12.2	Vynco is not responsible for delays in the collection of the Goods.	
	12.3	Unless otherwise agreed in writing, the collection point will be at the Place of Collection.	
	12.4	If the Goods are to be removed or relocated by Vynco the Goods must be packed up and ready for loading at the pre-arranged time and place and assistance rendered for loading.	
	12.5	The Customer grants Vynco full rights of access to enter upon its premises for the purposes of delivering and collecting the Goods.	
	12.6	Risk in the Goods supplied by Vynco will pass to the Customer when the Goods are collected from the Place of Collection or, if the Customer does not collect the Goods pursuant to clause 4.3, the working day after Vynco has informed the Customer that the Goods are ready for collection in accordance with this Contract.	
	12.7	Any relocation of the Goods must be performed by Vynco, unless Vynco otherwise consents in writing for the Customer to engage another person to relocate the Goods. If Vynco expressly consents to another person relocating the Goods then the relocation shall be on the terms and conditions set out in Vynco's written consent. The Customer shall notify Vynco, in writing, when the Customer seeks to relocate the Goods. The Customer indemnifies Vynco against any cost, claim, damage, expense or liability suffered or incurred by Vynco whether arising directly or indirectly from Vynco's or the Customer's actions or inactions under this clause 12.	
	12.8	The Customer will indemnify Vynco for any loss, damage or costs (including solicitor - client legal costs) suffered by Vynco as a result of any breach of this Contract by the Customer or any of the Customer's employees, agents or contractors.	
	13.	<b>Hire of Goods</b>	
	13.1	The Customer shall be liable to carry out (at the Customer's own expense) any required testing and/or maintenance on the Goods during the Hire Period.	
	13.2	In the case of damage to the Goods, however caused, the Customer shall be responsible for and shall indemnify Vynco for the full costs of all repairs to restore the Goods to the condition they were in at the time of hire.	
	13.3	In the case of loss or irreparable damage to the Goods, however caused, the Customer shall be responsible for and shall indemnify Vynco for the full cost to Vynco of replacing the Goods.	
	13.4	In addition to the costs set out in clause 13.1 and 13.2 the Customer shall be responsible for and shall indemnify Vynco for any loss of revenue suffered by Vynco due to the unavailability of the Goods for sale or hire due to loss or damage to the Goods.	
	13.5	The Customer warrants that all persons who use the Goods shall be competent and suitably qualified to use the Goods, shall only use the Goods in the manner it was designed to be used, and follow any directions from Vynco, local authorities,	

	codes of practice and/or the manufacturer of the Goods relating to the use and safety of the Goods and the persons using said equipment in accordance with the Health and Safety at Work Act 2015 and all other relevant legislation and applicable regulations.	
13.6	As a pre-requisite to the hire of any Goods the Customer must provide written confirmation of suitable insurance cover that is satisfactory in every respect to Vynco in its sole discretion is provided by the Customer. This must be provided prior to the Customer taking possession of the Goods. If Vynco is not satisfied with the Customer's compliance with this clause, Vynco may decline to hire the Goods.	14.2 The obligations of the Guarantor under this clause 14 will not be discharged, released or otherwise affected by any delay, grant of time, release, compromise, forbearance or other indulgence granted (as the case may be) by Vynco to the Customer. The rights of Vynco under this clause 14 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by the Customer of the Customer's obligations under this Contract.
13.7	Where Goods are hired to the Customer, the Customer shall:	15. <b>Termination</b> This Contract (including any unperformed obligations of Vynco) may be terminated by immediate effect by Vynco's written notice to the Customer in the event of:
	13.7.1 not part with the possession of the Goods and shall not sublet, or sell, or attempt to alienate the Goods in any way, or grant security interest in, or deal with the Goods in any way;	15.1.1 the Customer's default or threatened default (in the opinion of Vynco) under this Contract or any other agreement with Vynco;
	13.7.2 ensure that the goods are returned to Vynco at the end of the Hire Period in the same order as at the commencement of the hire (fair wear and tear excepted) be liable for any loss or damage to any Goods, including but not limited to, damage or loss caused by fire, storm, collision, accident, theft or burglary, or arising from misuse, abuse or overloading, mysterious disappearance or wrongful conversion, any breach of the Contract, violation of any laws, normal servicing, location, use, loading, unloading or transportation on or over water, wharves, bridges or vessels of any kind, exposure to any corrosive substances (including caustic, cyanide, acids, salt water), theft where not reasonably locked and secured, transportation (except where transported by Vynco), or negligence by the Customer and shall pay to Vynco the cost of making good the repair to the Goods or the cost of replacing the Goods, whichever is the lesser. The Customer shall be liable for the cost of replacing any lost or non returned keys and any loss of hire as a result of such loss or damage;	15.1.2 the Customer becoming insolvent; or being subject to the appointment of a receiver, manager, liquidator, or statutory manager; or committing an act of bankruptcy; or making a scheme of arrangement with its creditors; or being unlikely to be able to meet its obligations to Vynco (in the opinion of Vynco);
	13.7.3 take proper care of and use the Goods in a manner or to such an extent that a reasonable customer would, (including keeping the Goods locked and secured when not in use) and according to any manufacturer's specifications and instructions, if any, given by Vynco and shall maintain the Goods in a good and clean condition;	15.1.3 Vynco believes (in its opinion) that the Goods may be at risk for any reason whatsoever, including the manner of its use by the Hirer, adverse weather or work conditions, or the Hirer is unable to, or might be unable to, pay any charge, cost, purchase price or fee in connection with the equipment under these Terms & Conditions;
	13.7.4 not carry out repairs, adjustments, alterations or additions to, or relocations of, the Goods without the express consent of Vynco;	15.2 In addition to Vynco's rights under clause 15.1, Vynco will be entitled to terminate this Contract at any time by serving not less than 48 hours' notice on the Customer.
	13.7.5 not remove any signage of the Goods without the prior written consent of Vynco; and	15.3 The agreements and obligations of the parties will not merge with termination of this Contract under this clause 15.
	13.7.6 ensure that the returned Goods are clean. The Customer shall be liable for the costs of cleaning Goods returned in a dirty condition;	16. <b>General</b> All Vynco's rights pursuant to this Contract will remain in full force despite any delay in enforcement. Vynco will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of Vynco. Any waiver will apply only to the particular matter in respect of which it is given.
	13.7.7 if the Goods are intended to be used in a location or manner which is outside its usual or ordinary use, advise Vynco of the intended location and/or nature of use at the same time of hiring	16.2 Vynco is entitled at any time to assign its rights under this Contract to any person by written notice to the Customer. Vynco's assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or part of the debt which is assigned. The Customer may not assign its rights under this Contract.
	13.7.8 comply with any special conditions or exclusions (which may apply to specific equipment or the nature or location of the Customer's intended use of such equipment) notified to the Customer prior to the equipment leaving Vynco's premises;	16.3 Vynco and the Customer agree that this Contract expresses the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this Contract. There is no inconsistency with the terms of any order that may be lodged by the Customer. If there is any inconsistency then any such order will be of no effect. This Contract will not be subject to change or modification except with the prior written consent of both parties.
	13.7.9 carry out all necessary daily servicing of the Goods as may reasonably be required as part of the daily operation of the hired equipment at the Customer's own expense;	16.4 All copyright, patent, and intellectual property of any designs, drawings, specifications, sketches and samples provided by Vynco shall remain the property of Vynco and shall only be used by the Customer for the use for which they were intended and supplied.
	13.7.10 immediately notify Vynco, by telephone, if the Goods are damaged or are otherwise in need of maintenance or repair, are lost or stolen and shall follow all reasonable instructions of Vynco;	16.5 All designs, drawings, sketches and other material supplied by Vynco shall be approximate only and do not bind Vynco unless expressly stated and Vynco reserves the right to alter, change, or vary any such material solely at its discretion if in its opinion it does not significantly affect the performance characteristics of the Goods.
	13.7.11 on request by Vynco advise of the location of any hired Goods; and	16.6 If any provision of these terms 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.
	13.7.12 give Vynco irrevocable licence to enter any premises within the Customer's control for the purposes of inspecting, repairing, testing or removing the Goods.	16.7 Vynco shall not be liable for delay or failure to perform its obligations due to any act of God, force majeure or if the cause of the delay or failure is beyond Vynco's control.
13.8	Vynco may at any time assign its rights or interests, or any part of them (whether absolutely or by way of security) or transfer its obligations or any part of them under the Contract to any person.	16.8 The laws of New Zealand shall apply to these Terms & Conditions and any dispute shall be subject to the exclusive jurisdiction of the courts of New Zealand.
14.	<b>Guarantee</b>	16.9 The parties may execute a counterpart copy of this Contract by photocopying a facsimile, or printing out an email version, of this Contract and executing that photocopy or email version. Where a party executes such a counterpart copy and transmits the signed execution page of that counterpart copy by facsimile or email to the other party, then, for the purposes of this Contract:
14.1	In consideration of the Customer entering into this Contract, the Guarantor hereby unconditionally and irrevocably guarantees by way of continuing obligation the due and punctual performance and observation by the Customer of all its obligations and agreements under this Contract and acknowledges that as between the Guarantor and Vynco, the Guarantor shall be deemed to be the principal obligor under this Contract.	16.9.1 the transmission shall be deemed proof of signature of the original; and
		16.9.2 the signed counterpart copy shall be deemed to be an original for the purposes of this Contract.