
Beattie Air – Terms & Conditions of Hire

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Beattie Air"** shall mean Beattie Airconditioning Limited and/or Beattie Family Trust T/A Beattie Air, its successors and assigns or any person acting on behalf of and with the authority of Beattie Airconditioning Limited or Beattie Family Trust T/A Beattie Air.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Beattie Air to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Equipment"** shall mean all Equipment (including any accessories) supplied on hire by Beattie Air to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Beattie Air to the Client.
- 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 Beattie Air to the Client.
- 1.6 **"Site"** means the location/s at which the Equipment is to be operated.
- 1.7 **"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.
- 1.8 **"Charges"** shall mean the cost of the hire (including any Goods and Services Tax (GST) where applicable) of the Equipment as agreed between Beattie Air and the Client subject to clause 5 of this Contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client 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 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.
- 2.4 The Client acknowledges that the supply of Equipment shall not take effect until the Client has been approved with Beattie Air.
- 2.5 In the event that the supply of Equipment requested exceeds the payment terms, Beattie Air reserves the right to refuse delivery.
- 2.6 Where the Client is a tenant (and therefore not the owner of the land/premises where the services are to be undertaken), the Client warrants that full consent has been obtained from the owner for Beattie Air to carry out the services. The Client acknowledges and agrees that they shall be personally liable for full payment of the Charges for all hire provided under this Contract and to indemnify Beattie Air against any claim made by the owner of the land/premises (howsoever arising) in relation to the provision of the services by Beattie Air; except where such claim has arisen because of the negligence of Beattie Air.
- 2.7 The Client agrees that they shall upon request from Beattie Air provide evidence that:
- (a) they are the owner of the land/premises upon which the services are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the services to be undertaken.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Beattie Air shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Beattie Air in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Beattie Air in respect of the Equipment hire and/or services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Beattie Air; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Beattie Air not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Beattie Air as a result of the Client's failure to comply with this clause.

5. Charges and Payment

- 5.1 At Beattie Air's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by Beattie Air to the Client in respect of Equipment supplied; or
 - (b) Beattie Air's current Charges, at the date of Delivery of the Equipment, according to Beattie Air's current price list; or
 - (c) Beattie Air's quoted price (subject to clause 5.3) which shall be binding upon Beattie Air provided that the Client shall accept Beattie Air's quotation in writing within thirty (30) days.

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- 5.2 Building works and installation will be shown on Beattie Air's quotation.
- 5.3 Beattie Air reserves the right to change the Charges if a variation to Beattie Air's quotation is requested. Variations will be charged for on the basis of Beattie Air's quotation, and will be detailed in writing, and shown as variations on Beattie Air's invoice. The Client shall be required to respond to any variation submitted by Beattie Air within ten (10) working days. Failure to do so will entitle Beattie Air to add the cost of the variation to the Charges.
- 5.4 At Beattie Air's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Client within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client under clause 13.3, and any outstanding balance thereof shall be due as per clause 5.5.(and may include the cost of delivery of Materials or the Charges of one month's hire fees).
- 5.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by Beattie Air, which may be:
- (a) on or before delivery of the Equipment;
 - (b) by way of instalments in accordance with Beattie Air's payment schedule;
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Beattie Air.
- 5.6 Beattie Air may in its discretion allocate any payment received from the Client towards any invoice that Beattie Air determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Beattie Air may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Beattie Air, payment will be deemed to be allocated in such manner as preserves the maximum value of Beattie Air's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and Beattie Air.
- 5.8 Receipt by Beattie Air of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 5.9 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Beattie Air nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to Beattie Air an amount equal to any GST Beattie Air must pay for any supply by Beattie Air under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

6. Contract Term

- 6.1 The commencement date shall be the date of the first delivery of the Equipment, or from the date of signing, whichever, is the earlier. The Hire Contract shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least thirty (30) days required notice as defined in the Hire Contract prior to the expiration date of the initial term or any additional term.
- 6.2 The Client acknowledges and accepts that the Charges stated will remain fixed for an initial period of twelve (12) months from the date of the Hire Contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).

7. Hire Period

- 7.1 Hire Charges shall commence from the time the Equipment departs from Beattie Air's premises and will continue until the return of the Equipment to Beattie Air's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 7.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 7.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless Beattie Air confirms special prior arrangements in writing.
- 7.4 Off-hire receipts will only be issued when the Equipment has been either collected by Beattie Air, or returned to Beattie Air's premises.

8. Delivery

- 8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that Beattie Air (or Beattie Air's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 8.2 At Beattie Air's sole discretion the cost of Delivery is in addition to the Charges.
- 8.3 Where Beattie Air is to deliver the Equipment the Client shall make all arrangements necessary to take Delivery of the Equipment whenever it is tendered for Delivery. In the event that the Client is unable to take Delivery of the Equipment as arranged then Beattie Air shall be entitled to charge a reasonable fee for redelivery.

9. Risk

- 9.1 Beattie Air retains property in the Equipment nonetheless; all risk for the Equipment passes to the Client on Delivery.
- 9.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Beattie Air for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 9.3 The Client will insure, or self-insure, Beattie Air's interest in the Equipment 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 arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

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- 9.4 The Client accepts full responsibility for and shall keep Beattie Air indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 9.5 Beattie Air will not be responsible for repairing the structure after dismantling the Equipment e.g. the holes for the duct work.
- 10. Title**
- 10.1 The Equipment is and will at all time remain the absolute property of Beattie Air.
- 10.2 If the Client fails to return the Equipment to Beattie Air then Beattie Air or Beattie Air's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 10.3 The Client is not authorised to pledge Beattie Air's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 11.1 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to Beattie Air for services – that have previously been supplied and that will be supplied in the future by Beattie Air to the Client.
- 11.2 The Client 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 Beattie Air may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Beattie Air 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 and/or collateral (account) in favour of a third party without the prior written consent of Beattie Air.
- 11.3 Beattie Air and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by Beattie Air, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by Beattie Air under clauses 11.1 to 11.5.
- 11.7 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11.8 Only to the extent that the hire of the Equipment exceeds a twelve (12) month hire period (or a six (6) month hire period with the right of renewal), shall clause 11 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 11 will apply generally for the purposes of the PPSA.
- 12. Security and Charge**
- 12.1 In consideration of Beattie Air agreeing to supply the Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies Beattie Air from and against all Beattie Air's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Beattie Air's rights under this clause.
- 12.3 The Client irrevocably appoints Beattie Air and each director of Beattie Air as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13. Client's Responsibilities**
- 13.1 The Client shall:
- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (b) notify Beattie Air immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) maintain the Equipment as is required by Beattie Air;
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Beattie Air or posted on the Equipment;
 - (e) ensure that:
 - (f) they comply with all workplace health and safety laws relating to the Equipment and its operation;
 - (g) they hold necessary permits, electrical connection and permission for units to be on site;
 - (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Beattie Air;
 - (i) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
 - (j) indemnify and hold harmless Beattie Air in respect of all claims arising out of the Client's use of the Equipment.
- 13.2 The Client shall not:
- (a) 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;

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- (b) exceed the recommended or legal load and capacity limits of the Equipment;
- (c) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 13.3 Immediately on request by Beattie Air the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Beattie Air;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by:
- (i) the ordinary use of the Equipment;
- (ii) the negligence of the Client or the Client's agent;
- (iii) vandalism, or (in Beattie Air's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- (d) the cost of consumables provided by Beattie Air and used by the Client;
- (e) any:
- (i) lost hire fees Beattie Air would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (ii) costs incurred by Beattie Air in picking up and returning the Equipment to Beattie Air's premises if the Client does not return the Equipment to Beattie Air's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
- (iii) insurance excess payable in relation to a claim made by either the Client or Beattie Air in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Beattie Air's.
- 14. Defects**
- 14.1 The Client shall inspect the Equipment on Delivery and shall within forty eight (48) hours notify Beattie Air of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Beattie Air an opportunity to inspect the Equipment within a reasonable time following Delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which Beattie Air has agreed in writing that the Client is entitled to reject, Beattie Air's liability is limited to replacing the Equipment.
- 15. Consumer Guarantees Act 1993**
- 15.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 16. Default and Consequences of Default**
- 16.1 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 a half percent (2.5%) per calendar month (and at Beattie Air's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes Beattie Air any money the Client shall indemnify Beattie Air from and against all costs and disbursements incurred by Beattie Air in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Beattie Air's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies Beattie Air may have under this Contract, if the Client has made payment to Beattie Air, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Beattie Air under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to Beattie Air's other remedies at law Beattie Air shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Beattie Air shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Beattie Air becomes overdue, or in Beattie Air's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by Beattie Air;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies Beattie Air may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Beattie Air may suspend or terminate the supply of Equipment on hire to the Client. Beattie Air will not be liable to the Client for any loss or damage the Client suffers because Beattie Air has exercised its rights under this clause.
- 17.2 Beattie Air 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 Beattie Air shall repay to the Client any sums paid in respect of the Charges. Beattie Air shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.3 In the event that the Client:
- (a) wishes to cancel Delivery of the Equipment then the Client shall be liable for any loss incurred by Beattie Air (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation;
- (b) cancels the provision of services prior to the expiry of any specified contract term, then the Client shall be liable to pay for the provision of the services until the expiration of the contact term;
- (c) fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the Hire Contract, the Hire Contract shall automatically renew on a monthly basis, unless cancelled by way of the Client providing Beattie Air with thirty (30) days' notice.

18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by Beattie Air is Personal Information as defined and referred to in clause 0 and therefore considered confidential. Beattie Air acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 and 2020 (“the Act”) including Part II of the OECD Guidelines and as set out in 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”). Beattie Air acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by Beattie Air that may result in serious harm to the Client, Beattie Air will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to Beattie Air in respect of 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 Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Beattie Air when Beattie Air sends an email to the Client, so Beattie Air may collect and review that information (“collectively Personal Information”)
- Beattie Air agrees to display reference to such cookies and/or similar tracking technologies. In order to enable / disable the collection of Personal Information by way of cookies, the Client shall have the right to enable / disable the cookies first by selecting the option to enable / disable via the Client’s web browser, including removing cookies by deleting them from the browser history when exiting the website.
- 18.3 The Client authorises Beattie Air or Beattie Air’s agent to:
- (a) access, collect, retain and use any information about the Client;
 - (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 Client’s creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Beattie Air from the Client directly or obtained by Beattie Air 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 Client.
- 18.4 Where the Client is an individual the authorities under clause 0 are authorities or consents for the purposes of the Privacy Act 1993 and 2020.
- 18.5 The Client shall have the right to request (by e-mail) from Beattie Air, a copy of the Personal Information about the Client retained by Beattie Air and the right to request that Beattie Air correct any incorrect Personal Information.
- 18.6 Beattie Air will destroy Personal Information upon the Client’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.
- 18.7 The Client can make a privacy complaint by contacting Beattie Air via e-mail. Beattie Air 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

19. Service of Notices

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party’s last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Trusts

- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not Beattie Air may have notice of the Trust, the Client covenants with Beattie Air as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Beattie Air (Beattie Air will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

21. General

- 21.1 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.
- 21.2 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 Christchurch, New Zealand.
- 21.3 Except to the extent permitted by law "**CGA**", Beattie Air shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Beattie Air of these terms and conditions (alternatively Beattie Air's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 21.4 Beattie Air may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 21.5 The Client cannot assign or licence without the written approval of Beattie Air.
- 21.6 Beattie Air may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Beattie Air's sub-contractors without the authority of Beattie Air.
- 21.7 The Client agrees that Beattie Air may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Beattie Air to provide Equipment to the Client.
- 21.8 Neither party shall be liable for any delay 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. Both parties agree to exercise their obligations under the provisions of this Contract as soon as it is reasonably possible.
- 21.9 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.