

Plant and Equipment Hire

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1. Terms and parties to hire

- 1.1 The terms set out below shall apply to any contract for the hire of goods (“equipment”) between 73 Hire Limited (“the Owner”) and the person hiring the equipment (“Hirer”). This being referred to as (“the Contract”).
- 1.2 The Owner reserves the right to change these terms without notice, with any amendments being recorded at the time of the Contract that follows the changes coming into effect.
- 1.3 The Contract is subject to the Owner’s rights to deal with the equipment as set out in these terms which are deemed to be accepted on provision of a copy of these terms.
- 1.4 All accessories, replacement parts or any additional materials whatsoever which may be attached to or supplied by the Owner to the Hirer for use or in connection with the equipment at any time during the hiring shall become part thereof and the word equipment shall be read throughout the Contract to include such accessories, replacement parts or any additional materials whatsoever.

2. Hire basis

- 2.1 Equipment may be hired for varying periods, as agreed to in writing in the Contract.
- 2.2 The parties agree that the Hirer has been advised that the Owner will charge extra for any equipment usage in excess of the usage agreed in the Contract.
- 2.3 Certain equipment may carry minimum hiring periods. The Hirer shall not be entitled to a refund or reduced hire charge if the Hirer returns the equipment prior to the end of the minimum period or the end of the hire period agreed.
- 2.4 The hire period begins from the time the equipment leaves the Owner’s premises and runs until the equipment is returned to the Owner at the place of hire or is removed by the Owner pursuant to the terms set out in the Contract.
- 2.5 The Hirer shall pay during the hire period for all materials used, loss and damage waiver charges (if applicable), excess use charges, damage to or loss of the equipment, cleaning costs (as below in 2.6), and any default interest for late payment.
- 2.6 Returned equipment is expected to be cleaned thoroughly. Cleaning fees will be assessed and charged if the Hirer returns equipment that is not cleaned as required.

3. Default

- 3.1 When in default of any monies payable under the Contract, without prejudice to the Owner’s other remedies under these conditions at law or otherwise, the Hirer will pay default interest at the rate of 2% per calendar month on all outstanding until all monies have been paid in full.
- 3.2 The Hirer shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or an attempted exercise of any of its rights or remedies under the Contract, including commissions and legal costs on a solicitor and client basis.
- 3.3 The Hirer must make all payments due under the Contract without set-off or deduction of any kind.

4. Transport

- 4.1 The Contract is based on the cost of the hire of equipment only. The Hirer is responsible for arranging appropriate transport to and from the Hirer’s premises or site of use.

- 4.2 The Owner authorises the Hirer to bring an appropriate vehicle onto the place where the equipment is to be collected and returned, at the beginning and expiry of the hire period. This authorisation shall be revoked if:
- 4.2.1 The Hirer's vehicle is visibly unsuitable for the purpose of transporting the equipment.
- 4.2.2 The vehicle is driven / used while on the Owner's premises in an unlawful or unsafe manner.
- 4.3 The suitability of the vehicle to transport equipment is solely the responsibility of the Hirer as is liability for any loss, damage or any consequence whatsoever of unsuitability.
- 4.4 The Owner may at their sole discretion view the transport at the time of hire for the purposes of suitability. If the Owner does such a review and the transport is deemed unsuitable for whatsoever reason, the Hirer is solely responsible for arranging alternative transport. If the Owner does such a review and the transport is deemed suitable, the suitability of the transport remains at the risk of the Hirer.
- 4.5 Unless otherwise agreed between the parties, a minimum administration and or processing cost will be payable where the Hirer's transport is deemed unsuitable and they Hirer is unable to arrange an alternative resulting in the cancellation of the Contract.

5. Termination by owner

- 5.1 The Owner may terminate the Contract by notice with immediate effect. Reasons that the Owner may terminate include but are not limited to;
- 5.1.1 The Owner's belief the equipment to be at risk for any reason whatsoever including, but not limited to, the manner of its use by the Hirer or adverse weather or work conditions,
- 5.1.2 The Hirer being unable to, or might be unable to, pay any continuing hire charge, or default cost in accordance with this Contract.
- 5.1.3 Any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, administrator or other like person over the Hirer's business or personal affairs or assets.
- 5.2 The Hirer grants the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter at any time onto any place where the equipment is situated or thought to be situated to remove the equipment in the event the Contract is terminated.
- 5.3 The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any equipment hired or monies payable by the Hirer pursuant to the Contract.
- 5.4 The Owner will not be liable to the Hirer or any other person for any loss suffered or liability incurred arising from termination of the Contract or repossession of the equipment.
- 5.5 Cancellation of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract.

6. Non assignment of Contract

- 6.1 The Contract is personal to the Hirer and is not capable of assignment whether in whole or in part by the Hirer.
- 6.2 The Hirer shall not sublet the equipment to any other person but this shall not prevent employees of the Hirer using the equipment in conformity with these Conditions.

7. Obligations of Hirer

- 7.1 The Hirer agrees and acknowledges that they are obligated to:
- 7.1.1 Advise the Owner if the equipment is intended to be used in a location or manner which is outside the usual or ordinary use of the equipment. The Hirer must advise the intended location and / or nature of use at the time of hiring the equipment.
 - 7.1.2 Take proper and reasonable care of the equipment and, if the equipment is hired, return it to the Owner at the end of the hire period (to the place of hire, unless otherwise specified in the Contract) in the same order and condition as at the commencement of the hire (fair wear and tear excepted).
 - 7.1.3 Carry out all necessary daily servicing, (including by way of example the inspection and where necessary the supply of all necessary tyre pressures, water, oils, grease and fuel) at the Hirer's expense.
 - 7.1.4 Satisfy themselves that the equipment is suitable for the intended use; and use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment.
 - 7.1.5 If the equipment is faulty in any way whatsoever, immediately cease operating the equipment and notify the Owner by telephone if the equipment is faulty, breaks down or if any warning light or buzzer is activated; and
 - 7.1.6 Except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the equipment.
- 7.2 The Hirer warrants that all persons who use the equipment shall be competent and qualified to use the equipment, shall use the equipment in the manner it was designed to be used, and that they are aware of, understand and will follow any directions from the Owner, local authorities, codes of practice or from the manufacturer of the equipment relating to the use and safety of the equipment and with all obligations in relation to the use and control of the equipment and person using said equipment to the Health and Safety in Employment Act 1992 and all other relevant legislation.
- 7.3 If the Hirer is not an individual, the person who signs the Contract on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations on the Hirer. The person so signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person so signing the Contract failing to have such power or authority.

8 Vehicle Hire

- 8.1 If the equipment being hired is a vehicle (as defined in the Land Transport Act 1998), then notwithstanding any other provision in the Contract including these Conditions, the Hirer shall:
- 8.1.1 Ensure that the vehicle is driven during the period of hire only by the Hirer and persons named on the Contract and only if they hold a current full driver's licence appropriate for the vehicle at the time when they are driving the vehicle.
 - 8.1.2 As soon as possible, where the vehicle is damaged or requires repair or salvage, whether because of an accident or breakdown, advise the Owner of the full circumstances by telephone.
 - 8.1.3 Not arrange or undertake any repairs or salvage (excluding servicing under clause 7.1.2) without the authority of the Owner except to the extent that the repairs or salvage are necessary to prevent further damage to the vehicle or to other property.

- 8.1.4 Ensure that no person shall interfere with the distance recorder or speedometer or, except in any emergency, any part of the engine, transmission, braking, or suspension systems of the vehicle.
- 8.1.5 Not use or permit the vehicle to be used for the carriage of passengers for hire or reward unless the vehicle is hired with the knowledge of the Owner for use in a passenger service licensed under Part 4A of the Land Transport Act 1998.
- 8.2 The Hirer shall not:
- 8.2.1 sublet or hire the vehicle to any other person;
 - 8.2.2 permit the vehicle to be operated outside the Hirer's authority;
 - 8.2.3 operate the vehicle or permit it to be operated, in circumstances that constitute an offence by the driver against any of sections 56, 57, 57A and 58 of the Land Transport Act 1998 (which relates to driving under the influence of drink or drugs);
 - 8.2.4 operate the vehicle or permit it to be operated in any race, speed test, rally or contest;
 - 8.2.5 operate the vehicle or permit it to be operated in breach of the Transport Act 1962, the Land Transport Act 1998, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, the Traffic Regulations 1976 or any other Act, regulations, rules or bylaws relating to road traffic; or
 - 8.2.6 operate the vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the vehicle.
- 8.3 The Hirer will be responsible for all penalties relating to traffic offences incurred during the hire period, including without limitation speeding, parking, toll and traffic signal offences.
- 8.4 The Hirer will be wholly responsible for the full replacement cost of the vehicle plus any legal or other costs whatsoever in the event the Owner's insurance is invalidated by any act or omission by the Hirer in breach of this agreement or otherwise.
- 8.5 The Hirer will be wholly responsible for any insurance excess or other costs associated with any claim by the Owner for any act or omission by the Hirer. In the event the Owner in their sole discretion decides to forgo a claim to their insurance provider, the Hirer is wholly responsible for the cost of what would otherwise have been claimed for any act or omission by the Hirer.
- 8.6 The Owner will forward a copy of any relevant infringement notices it receives, along with the copy of the Contract (including these Conditions) to the Hirer as soon as practicable and advise the Hirer that if the Owner receives a reminder notice of the infringement, it will deduct payment from the Hirer's credit card. If the Owner receives a relevant reminder notice without having received an infringement notice, it will forward a copy of the reminder notice, along with the copy of the Contract (including these Conditions) to the Hirer as soon as practicable and advise the Hirer that the Owner will deduct payment from the Hirer's credit card.
- 8.7 The Hirer acknowledges that an administration fee will be applied by the Owner to the Hirer to process these infringements and deduct payment from the Hirer's credit card or account. The Hirer acknowledges that it has the right to challenge, complain about, query or object to the alleged offence to the authority issuing the infringement notice and to seek a court hearing within 56 days of the date of any infringement notice and 28 days from the issue of a reminder notice.

- 8.8 The Hirer will ensure that a copy of the Contract (including these terms) is kept within the vehicle throughout the hire period and produced without delay for inspection upon demand by an enforcement officer.
- 8.9 If the Owner is unable to deduct the relevant payment from the Hirer's credit card for whatsoever reason the Owner may pursue the Hirer for the full cost of the payment plus administration fee. The failure to pay these sums will result in the Hirer being in default as outlined in this agreement.

9 Personal Property Securities Act 1999 (PPSA)

- 9.1 The Hirer acknowledges that title to hired equipment remains with the Owner at all times.
- 9.2 Hire may create a security interest in the equipment. If so, the provisions of this part 9 apply. All terms in this part 9 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 9.3 On the request of the Owner, the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under the Contract (including these Conditions) constitutes a perfected security interest in the equipment and their proceeds which will have priority over all other security interests in the equipment.
- 9.4 The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with the Contract.
- 9.5 The Hirer waives its rights under sections 114(1) (a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA.

10 Liability of the Hirer

- 10.1 The Hirer shall notify the Owner immediately if the hired equipment malfunctions, is lost, stolen or damaged and shall follow all reasonable instructions of the Owner.
- 10.2 Subject to clause 11, the Hirer shall be responsible, and shall indemnify the Owner, for any malfunction, loss, theft or damage to the equipment that occurs from the time the Hirer takes possession of the equipment until it is returned to the Owner's possession including;
- 10.2.1 In the case of malfunction or damage, the full cost of all repairs to restore the equipment to the condition it was in at the time of hire; and
- 10.2.2 In the case of loss, theft or irreparable damage to the equipment however caused the full cost to the Owner of replacing the equipment.
- 10.3 In addition to the costs set out in clauses 10.2 the Hirer shall be responsible for and shall indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the equipment for hire due to loss, theft or damage.

11 Limitation of Liability

- 11.1 In entering into the Contract, the Hirer acknowledges that the Owner has no liability to the Hirer for any direct or indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with the Contract (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law. Without limiting the foregoing, the Owner is not liable for any indirect or consequential loss or damage including any loss of profit or other loss suffered by the Hirer, or liability incurred by the Hirer, as a result of the breakdown of any hired equipment, however caused or unsuitability of the equipment.

- 11.2 Subject to the exclusion of liability in clause 12.1 above, the maximum aggregate liability of the Owner for all claims made by the Hirer, whether as a result of any breach of the Contract or on any other ground or terms whatsoever (including, but not limited to, liability as a result of tort, including negligence) will not exceed the lesser of the hire charges paid by the Hirer to the Owner pursuant to the Contract and three months hire charges paid by the Hirer to the Owner pursuant to the Contract.
- 11.3 The Hirer will indemnify the Owner against any liability, losses, damages or expenses incurred or suffered by the Owner as a result of any claim made by a third person against the Owner in respect of any loss or liability arising from the contract or arising out of the use of the equipment hired or purchased by the Hirer.
- 11.4 Nothing in the Contract affects the Hirer's rights under the Consumer Guarantees Act 1993. If the Hirer is hiring the equipment for the purposes of a business, the provisions of that Act do not apply.
- 11.5 No employee, agent or contractor of the Owner is authorised to make any statement or representations as to the equipment, its fitness for purpose, or with respect to the Hirer's proposed use of the equipment (other than providing information relating to the proper operation and maintenance of the equipment). The Hirer shall not be entitled to rely or to seek to rely upon any such statement or representation made by an employee, agent or contractor of the Owner, and (without limiting clause 12.1) the Hirer acknowledges that the Owner shall have no liability for any loss arising out of the Hirer's reliance on any such statement.

12 Severance

- 12.1 If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby to the intent that the Contract should be construed as if the provision or part thereof in question has been deleted.

13 Privacy Act 1993 (and amendments)

- 13.1 In relation to the Contract, the Owner will collect personal information about the Hirer. The information is principally collected to evaluate the hire of equipment, but is also collected for customer database, marketing, sales and support purposes.
- 13.2 The failure to provide the information required for the Contract may result in your application to hire equipment being declined or the Contract subsequently being terminated by the Owner.
- 13.3 The Hirer has rights of access to personal information contained in the Contract, subject to the provisions of the Privacy Act 1993.
- 13.4 The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services.
- 13.5 The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire contracts entered into by the Hirer.
- 13.6 The Hirer agrees to the Owner releasing to other parties information regarding the Contract if the Hirer does not comply with its obligations under this agreement, and for the purposes of collection.