



UPPER HUTT HIRE LIMITED TERMS AND CONDITIONS

1. Conditions

The conditions set out below shall apply and are incorporated into any contract for the hire and/or sale of goods ("equipment") between Upper Hutt Hire Limited (the "Owner") and the person or entity hiring or buying the equipment ("Hirer"). The Hirer agrees to abide by the terms and conditions as set out below. If the Hirer is not an individual, the person signing the contract warrants that they have the authority to bind the Hirer in contract.

2. Delivery and removal of Equipment

The Hirer authorises the Owner to bring its vehicle onto his property to deliver and to recover the equipment at the end of hire. The Owner shall not be responsible to the Hirer nor third parties for any damage that may be done to driveways or underground services by any reason of the weight of the vehicle. Request for collection must be made by telephone when the Hirer has finished with the equipment and not by prior arrangement. Always ask for a pick-up number. All cartage charges are to be paid by the Hirer. Equipment must be free of extraneous dirt, packed up, ready for loading, and assistance rendered to the Owner's driver if more than one person is required to load it. THE HIRER MUST OBTAIN AN OFF-HIRE NUMBER WHEN TERMINATING HIRE. The hirer is still responsible for equipment until picked up from site by the Owner.

3. Hire Period

(a) The hire period shall commence and expire as stipulated on the Agreement or the time that the equipment leaves the Owner's premises. By the expiry time/date the equipment is to be delivered back to the Owner's premises unless agreed otherwise in writing. For every hour over the expiry time ending, the Owner has the right to charge you default interest from your bond at a rate of 5% on the value of payment.

(b) Unless agreed in writing otherwise, equipment is hired out on a daily rate (including weekends and public holidays).

(c) A 'day' is deemed to be 8 hours between the times of 8am to 5pm and a 'half day' is deemed to be no more than 4 hours or overnight if the hire period is between 5pm and 8am. The 'daily rate' shall apply to a day hire and one-week hireage is deemed to be 7 full days.

(d) Hiring commences at the time shown on the face of this form which is the time the equipment leaves the Owner's store. The hiring shall terminate at the time stated by the Hirer on the face of this form. By that time the equipment is to be delivered back into the Owner's store by the Hirer or following collection by the Owner's vehicle at the Hirer's request.

4. Owner's Right to Hire

(a) The Owner may terminate the hire at any time without reason by giving the giving the Hirer 12 hours written notice. Such notice may be given either by personal delivery or by post to either the job address or any other address of the Hirer specified on the face of this agreement, or by phone call or text or by email to the Hirers last known email address. In the case of notices posted to the Hirer the period of notice shall commence to run from the time at which the notice would have been delivered in the ordinary course of the post. The Owner shall not be responsible to the Hirer for any loss arising as a result of such termination.

(b) Notwithstanding termination of the hiring the Hirer shall be obliged to pay the Owner a sum equivalent to hire fees at the rate specified herein in respect of any period from the date of termination of the hiring until the equipment is actually returned to the Owner's store.

5. Hiring Charges

(a) In the absence of any special arrangements to the contrary equipment is hired on a daily rate including Saturday, Sunday and public holidays.

(b) Minimum rates apply when the term of the hire is not greater than 4 hours during our normal business hours.

(c) The hire period is based on the time the equipment is uplifted until the time the equipment is returned or advised for pickup, not the time for which the equipment is used.

(d) If the Hirer cancels a hire booking, the Owner reserves the right to charge a non-refundable hire fee equal to 50% of the Balance Due set out on the Hire Contract, so as to compensate in part for any other booking enquiries that may have been declined.

6. Payment

(a) Unless the Hirer operates a credit account with the Owner a bond is required before hiring commences which will exceed the estimated total charges and an appropriate refund will be made to the Hirer on return of the equipment in good order and condition. Should total charges exceed the amount of the bond the balance is payable by the Hirer promptly to the Owner on return.

(b) The Hirer by accepting the goods or services agrees to the terms and conditions as laid down by the Owner and agrees to pay any costs of collection and all legal fees incurred by the Owner in the event of legal action becoming necessary.

(c) Without prejudice to the Owners other remedies under these conditions, at law or otherwise, the Hirer will pay interest at the default interest rate specified on the Agreement on all amounts owing to the Owner under the Agreement which remain outstanding after the due date for payment, until all outstanding amounts have been repaid in full. This provision shall not constitute a waiver of the Hirer's default and the default interest is not an extension of credit to the Hirer.

(d) Where the Hirer operates a credit account with the Owner payment is due on the twentieth day of the month after the date of invoice. Where payment is not made by the due date, the Owner reserves the right, without prejudice to the Owners other remedies under these conditions, at law or otherwise, to charge default interest at the rate of 2% above the Owner's overdraft rate as it may apply, calculated from the due date to the date of payment, plus any applicable collection costs.

(e) If the Hirer does not require the Owner to waive the Hirer's responsibility for loss or damage to equipment under Condition 10 then the Hirer must make alternative arrangements in writing with the Owner through the Owner's credit department.

(f) No claim for credit will be recognised after one month of the date of invoice.

7. Care of Equipment and Breakdowns

(a) The Hirer shall take proper care of the equipment. In the event of the equipment being damaged, the Hirer shall pay to the Owner a sum equivalent to the cost of making good the said damage. In the event of the equivalent being lost on hire to the Hirer then the Hirer shall pay to the Owner a sum equivalent to the cost of replacing the equipment as lost. This obligation is subject to Condition 10 as applicable.

(b) Breakdown resulting from misuse shall not in any circumstances shorten the period of hire.

(c) It is the Hirer's responsibility to satisfy himself that the equipment is suitable for the work intended and that it is used in a way that complies with all statutory requirements.

(d) The equipment does not purport to be new stock or equal to new, but when sent out all items are understood to be in good condition and fit for the purpose for which they were designed.

(e) The Owner is not liable for any loss suffered by the Hirer or liability incurred by the Hirer as a result of the breakdown of the equipment howsoever caused. Notwithstanding the foregoing of any liability attaching to the Owner under this agreement shall be limited to the amount of hireage charges due under this agreement. In the event of breakdown the Hirer must immediately notify the Owner by telephone.

8. Injury or Damage to Hirer or Third Persons or Property

The Hirer shall not have any claim against the Owner for direct or consequential loss or damage suffered by the Hirer as a result of the Hirer's use of the equipment and further the Hirer will indemnify the Owner against any claim by a third person in respect of any direct or consequential loss, injury or liability arising from this hiring or arising out of the use of the equipment hired by the Hirer.

9. No Assignment of Hire Agreement

This agreement is personal to the Hirer and is not capable of assignment by him, and the Hirer shall not sublet the equipment to any other person, but this shall not prevent employees of the Hirer using the equipment by the Hirer.

10. No Warranties by Owner

The Owner makes no warranty or representations as to the state, quality or fitness of the equipment for any purpose and no such warranty shall be implied by the description of the equipment on the face of this form. All implied warranties and conditions as to the state, quality or fitness of the equipment for any purpose are hereby excluded.

11. Authority

The person signing this document for and on behalf of the Hirer (if not personally the Hirer) warrants that he or she has the authority of the Hirer to make this contract on the Hirer's behalf and that he or she is empowered by the Hirer to bind the Hirer to this agreement. 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 agreement failing to have such power of authority.

12. Location of Equipment

The Hirer shall forthwith, on request by the Owner, and advise the Owner of the whereabouts of the equipment and allow the Owner or its agent or servants reasonable time to inspect and test the equipment and for such purposes the Hirer hereby gives irrevocable leave and licence to the Owner its servants and agents to take possession of the equipment remove the same and to enter upon any premises where the equipment or any of the same or any part thereof may be.

13. Information

In the case of a person entering into this contract in a private capacity as Hirer, the Hirer by entering into this contract hereby authorises the disclosure of personal information regarding this creditworthiness by any other party to the Owner and that this personal information may be used by the Owner to assess credit worthiness, for debt collection purposes. In addition the Owner may use this information to advise the Hirer of the Owner's other goods and services. The Hirer has rights of access to and correction of personal information contained in this contract subject to the provisions of the Privacy Act 1993.

14. Credit

(a) The Hirer acknowledges that to receive credit from Upper Hutt Hire Limited, the following conditions must be observed. A credit account may be established at the sole discretion of the Owner upon the completion of a credit application form. In accordance with the Privacy Act 1993 Upper Hutt Hire Ltd is authorised to obtain such information as required to determine your credit worthiness. This will be used as a guideline in setting credit limits but may also be used for debt collection purposes.

(b) The Owner will invoice the Hirer on a monthly basis, and the Hirer undertakes to make payment by the 20th day of the month following the date of the invoice ("due date"). If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as described in the above paragraph herein. Payment of the disputed portion may be withheld provided the matter is brought to the Company attention as soon as it is discovered. A letter of explanation setting out the particulars of this dispute should be sent to the Owner within seven days of the dispute arising.

(c) Failure to pay any account by the due date shall be treated as a breach of contract and the Company may, in respect of such account, without prejudice to other rights or to other remedies, charge penalty interest of 10% per month, together with G.S.T. thereon until receipt of payment in full, this will be calculated monthly. The Hirer shall be responsible for all costs and/or expenses incurred if a Solicitor and/or Debt Collection Agency is employed to recover any amounts overdue for payment.

15. Guarantee

(a) The Guarantor agrees to unconditionally guarantee to Upper Hutt Hire Limited the due and punctual payment by the Hirer of all moneys payable in accordance with the conditions of Hire and Trade as and when the same become due and payable by the Customer.

(b) The signatory to this application agrees to be deemed as principal debtor for all accounts held by the Hirer with Upper Hutt Hire Limited.

(c) The signatory to this application agrees that this guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment of account and that this guarantee is both joint and several. The Hirer confirms that they have been advised by the Owner that they should seek legal advice before signing this guarantee.

(d) The Guarantor signatory to this application agrees that his/her/their liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by:

(i) the granting of time, credit or the indulgence or other concession to the Hirer;

(ii) any alteration, modification, variation or addition to any agreement in respect of the supply of good and services; or

(iii) any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect the Hirers obligations under this guarantee or any powers or remedies conferred upon Upper Hutt Hire Limited by this guarantee or by law.

16. Exclusion Clause

If the Hirer is hiring the Chattels for the purposes of a business as defined in the Consumer Guarantees Act 1993, the guarantees and undertakings applying to the Owner under the Consumer Guarantees Act 1993 are excluded to the maximum extent permitted by the law.

17. Personal Property Securities Act 1999

(a) All terms in this clause have the meaning given in the PPSA and section references are to sections of the PPSA.

(b) 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 this Agreement in favour of the Owner constitutes a perfected security interest in the Chattels and their proceeds which will have priority over all other security interests in the Chattels.

(c) The Hirer will pay to the Owner fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with this Agreement.

(d) The Hirer waives their rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA.

18. Failure to sign does not negate the Hirer's obligations under the Agreement

The Hirer accepts that on uplifting the equipment, but having been handed a copy of these Terms and Conditions, the Hirer shall be bound to this Agreement and Terms and Conditions. Failure to sign this Agreement and/or Terms and Conditions shall not negate the Hirer's responsibilities and obligations under the Agreement and Terms and Conditions

19. Health and Safety

(a) The Hirer acknowledges his/her responsibility to meet all the requirements of the Health and Safety at Work Act 2015 and all other statutory requirements and industry guidelines irrespective of whether he/she is deemed to be a Person Controlling a Business or Undertaking ("PCBU").

(b) The Hirer agrees that it his/her responsibility to satisfy him/herself that the equipment hired is suitable for the intended work and agrees to use the equipment in a way that complies with all statutory requirements and ensure the use of the equipment does not exceed the design parameters of the equipment, including but not restricted to maximum allowable speed, load limits, wind speed and suchlike.

(c) The Hirer agrees to use the equipment only after they have received sufficient information and training on the use of the equipment and agrees to seek further information from the Owner or Industry Expert if so required.

(d) The Hirer agrees to conduct a site risk assessment and develop a hazard management plan and record the results before commencing any work with the equipment.

(e) The Hirer agrees to undertake and complete such equipment pre-start checks and tasks as required by Worksafe or other statutory or industry body before commencing any work.

(f) The Hirer shall not tamper with or alter any safety devices or guards fitted to the equipment, and shall at all times use the necessary safety and personal protective equipment when operating the equipment.

(g) The Owner may decline the hire if the Hirer cannot provide evidence of training or competence, to the Owners satisfaction.

20. General

(a) Headings are inserted for convenience and shall not affect the construction of the Contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include the other. The word "including" does not imply limitation.

(b) 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, that will not affect or impair the legality, validity or enforceability of any other provision of this Contract.

(c) The Contract records the entire arrangement between the parties relating to the matters dealt with in this Contract and supersedes all previous arrangements, understandings or representations whether, written, oral or both, relating to these matters.

(d) This Contract is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.