

Aotearoa Rental Enterprises Limited T/A Appliance Rentals – Terms & Conditions of Hire

- 1. Definitions**
- 1.1 "Agent" shall mean New Zealand Master and its successors and assigns.
- 1.2 "Hirer" shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Hirer on a principal debtor basis.
- 1.4 "Equipment" shall mean Equipment supplied on hire by the Agent to the Hirer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Agent to the Hirer and includes any advice or recommendations (and where the context so permits shall include any supply of Equipment as defined above).
- 1.6 "Price" shall mean the cost of hiring the Equipment as agreed between the Agent and the Hirer subject to clause 4 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Agent from the Hirer for the supply of Equipment and/or the Hirer's acceptance of Equipment supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Hirer has entered into this agreement, the Hirer's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Hirer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Agent.
- 2.4 None of the Agent's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Agent in writing nor is the Agent bound by any such unauthorised statements.
- 3. Equipment / Services**
- 3.1 The Equipment and/or Services are as described on the Authority to Hire form, invoice, quotation or any other work commencement forms as provided by the Agent to the Hirer.
- 3.2 While every endeavour is made to supply equipment as ordered, the Agent reserves the right to substitute equipment where necessary.
- 4. Price And Payment**
- 4.1 At the Agents sole discretion the Price shall be either;
- (a) as indicated on the Authority to Hire form provided by the Agent to the Hirer in respect of Equipment supplied; or
- (b) be the Agent's current price at the date of delivery of the Equipment according to the Agent's current Price list; or
- (c) the Agents quoted price which shall be binding upon the Agent provided that the Hirer shall accept in writing the Agents quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Agent's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.
- 4.3 At the Agent's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Equipment and shall become immediately due and payable.
- 4.4 Time for payment for the Equipment/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Equipment/Services.
- 4.5 The Agent may withhold delivery of the Equipment until the Hirer has paid for them, in which event payment shall be made before the delivery date.
- 4.6 At the Agent's sole discretion, payment for approved Hirers shall be made by instalments in accordance with the Agents delivery/payment schedule.
- 4.7 At the Agent's sole discretion, payment for approved Hirer's shall be due thirty (30) days following the date of the invoice.
- 4.8 Immediately on request by the Agent the Hirer will pay:
- (a) The new list price of any Equipment which is for whatever reason not returned to Agent.
- (b) All costs incurred in cleaning the Equipment;
- (c) All costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
- (d) The cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's Agent;
- (e) The cost of repairing any damage to the Equipment caused by vandalism, or (in Agent's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
- 4.9 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Hirer and the Agent.
- 4.10 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Agent.
- 5. Hire Period**
- 5.1 The minimum period for which the Equipment can be hired is three (3) months (the "Minimum Hire Period").
- 5.2 Hiring charges shall commence from the time the Equipment is collected by the Hirer from the Agent's premises or delivered to the Hirer by the Agent and will continue until the return of the Equipment to the Agent's premises and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 5.3 If the Agent agrees with the Hirer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Agent's premises and continue until the Agent is notified by the Hirer that the Equipment is available for collection.
- 5.4 The responsibility of the Hirer for the security of the Equipment continues until the Equipment is returned or collected.
- 5.5 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless prior special arrangements are confirmed in writing by the Agent. In the event of Equipment breakdown, provided the Hirer notifies the Agent immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer.
- 6. Hirer's Responsibilities**
- 6.1 The Hirer shall:
- (a) notify the Agent immediately by telephone of the full circumstances of any breakdown or accident in connection with the Equipment. (The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification.);
- (b) satisfy itself at commencement of the hire period that the Equipment is suitable for its purposes;
- (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by the Agent or posted on the Equipment;
- (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are full licensed;
- (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (f) keep the Equipment in its own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (g) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, or number on or in the Equipment or in any other manner interfere with the Equipment;
- (h) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- 6.2 On termination of the hire, the Hirer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Agent. The Hirer is not authorised to pledge the Agent's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 6.3 The Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Agent 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 Hirer.
- 6.4 The Hirer accepts full responsibility for and indemnifies the Agent against all claims in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising, whether from the negligence of the Hirer or any other persons including but without limitation where the Equipment is being operated for any reason by the Agent their servants or employees.
- 7. Cancellation**
- 7.1 The Agent may cancel these terms and conditions or cancel delivery of Equipment and Services at any time before the Equipment is delivered by giving written notice. On giving such notice the Agent shall promptly repay to the Hirer any sums paid in respect of the Price for that Equipment. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 8. Delivery Of Equipment**
- 8.1 Delivery of the Equipment shall be made to the Hirer's address or delivery of the Equipment shall be made to the Hirer at the Agent's address. The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever they are tendered for delivery.
- 8.2 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
- 8.3 The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Equipment (or any of them) promptly or at all.
- 9. Risk**
- 9.1 If the Agent retains property in the Equipment nonetheless all risk for the Equipment passes to the Hirer on delivery.
- 9.2 The Hirer acknowledges that they are liable for any loss or damage to the equipment from the time of delivery until it is returned to the Owner.
- 9.3 The Hirer will insure, or self insure, the Owner'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 Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 10. Hirer's Disclaimer**
- 10.1 The Hirer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or Agent of the Agent and the Hirer acknowledges that he buys the Equipment relying solely upon his own skill and judgement and that the Agent shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Hirer and shall not be transferable to any subsequent Hirer.
- 11. Default & Consequences Of Default**
- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 11.2 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Agent from and against all the Agent's costs and disbursements including on a solicitor and own Hirer basis and in addition all of the Agents costs of collection.
- 11.3 Without prejudice to any other remedies the Agent may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the terms and conditions. The Agent will not be liable to the Hirer for any loss or damage the Hirer suffers because the Agent exercised its rights under this clause.
- 11.4 If any account remains unpaid at the end of the second month after supply of the Equipment or services the following shall apply: An immediate amount of the greater of \$10.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 In the event that:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Hirer will be unable to meet its payments as they fall due, Or;
- (b) the Hirer becomes insolvent, 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;
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer,
- then without prejudice to the Agent's other remedies at law
- (i) the Agent shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Agent shall, whether or not due for payment, immediately become due and payable.
- 12. Personal Property Securities Act 1999**
- 12.1 Upon assenting to these terms and conditions in writing the Hirer 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 previously supplied by the Agent to the Hirer (if any) and all Equipment that will be supplied in the future by the Agent to the Hirer during the continuance of the parties relationship.
- 12.2 The Hirer 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 the Agent may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Agent 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 a financing change statement or a change demand without the prior written consent of the Agent;
- (d) give the Agent not less than fourteen (14) days prior written notice of any proposed change in the Hirer's name and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's address, facsimile number, or business practice); and
- (e) immediately advise the Agent of any material change in its business practices of selling the Equipment which would result in a change in the nature of proceeds derived from such sales.
- 12.3 The Agent and the Hirer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 12.4 The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Agent, the Hirer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Hirer unconditionally ratifies any actions taken by the Agent under and by virtue of the power of attorney given by the Hirer to the Agent under clauses 12.1 to 12.5.
- 13. Security & Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
- (a) Where the Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Hirer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Hirer and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Hirer and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [12, 13.1(a) to (b)] inclusive hereof the Hirer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Hirer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Agent and/or the Agent's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Hirer and/or the Guarantor in any land, realty or asset in favour of the Agent and in the Hirer's and/or Guarantor's name as may be necessary to secure the said Hirer's and/or Guarantor's obligations and indebtedness to the Agent and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Agent's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 14. Consumer Guarantees Act 1993**
- 14.1 This agreement is subject, in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.
- 15. Privacy Act 1993**
- 15.1 The Hirer and the Guarantor/s (if separate to the Hirer) authorises the Agent to:
- (a) collect, retain, use and disclose any information about the Hirer, for the purpose of assessing the Hirers creditworthiness or marketing products and services; and
- (b) to disclose information about the Hirer, whether collected by the Agent from the Hirer directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the for the purposes of providing or obtaining a credit reference, debt collection, or notifying a default by the Hirer.
- 15.2 Where the Hirer is a natural person the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Hirer shall have the right to request the Agent for a copy of the information about the Hirer retained by the Agent and the right to request the Agent to correct any incorrect information about the Hirer held by the Agent.
- 16. Title**
- 16.1 The Equipment is and will at all times remain the absolute property of the Agent.
- 16.2 It is further agreed that
- (a) The Agent may give notice to the Hirer to return the Equipment or any of them to the Agent. Upon such notice the rights of the Hirer to any interest in the Equipment shall cease.
- (b) If the Hirer fails to return the Equipment to the Agent then the Agent or the Agent's Agent may enter upon and into land and premises owned, occupied or used by the Hirer, or any premises as the invitee of the Hirer, where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 17. General**
- 17.1 If any provision of these terms and conditions 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.
- 17.2 All Equipment and Services supplied by the Agent are supplied subject to the laws of New Zealand and the Agent takes no responsibility for changes in the law, which affect the supply of Equipment or Services.
- 17.3 The Agent shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Agent of these terms and conditions.
- 17.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of the parties.
- 17.5 In the event of any breach of this contract by the Agent the remedies of the Hirer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price.
- 17.6 The Hirer shall not set off against the Price amounts due from the Agent.
- 17.7 The Agent may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 17.8 The Agent reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Agent notifies the Hirer of such change.