

Ashburton U Hire (2003) Limited Hire & Sales Contract Terms and Conditions ("Conditions")

1. CONDITIONS

1.1. The Conditions set out below shall apply and are incorporated into any contract for the hire and/or sale of goods ("equipment") between Ashburton U Hire (2003) Limited (the "Owner") and the person/entity hiring or buying the equipment ("Hirer") ("Contract"). The Owner reserves the right to change these Conditions without notice. Any amended Conditions will be placed on Ashburton U Hire (2003) Limited's website (www.ashburtonuhire.co.nz) and shall apply with effect from the date they are placed on the website unless the amended Conditions specify a later date from which they are to apply.

2. CHARGES

2.1. Equipment may be hired for: a) Half Day, b) Daily, c) Weekly or d) Monthly or e) as agreed to in writing. The relevant hire period is set out in the Contract. The "hire periods" are as defined in clause 2.2 provided that the Hirer agrees that the Owner may charge extra on a pro rata basis for any equipment usage in excess of the hire periods or the "maximum usage times" as set out in clause 2.2. Certain equipment may carry minimum and/or maximum hiring periods. The Hirer shall not be entitled to a refund or reduced hire charge if the Hirer chooses to return the equipment to the Owner before the end of the agreed hire period unless previously agreed to by the Owner.

2.2. "Hire periods" and "maximum usage times" are:

- "Half Day" means 4 hours or overnight providing the equipment is picked up after 4.00pm and returned by 8.30am the following day (maximum usage time 4 hours);
- "Daily" means 24 hours (maximum usage time 8 hours);
- "Weekly" means 6 days (maximum usage time 48 hours); and
- "Monthly" means a calendar month (e.g. if pick up on the 18th of a month, return is to be by 4.00pm on the 17th of the following month (maximum usage time 180 hours).

2.3. The hire period begins from the time the equipment leaves the Owner's premises and runs until the equipment is either returned to the Owner at the place of hire, removed by the Owner pursuant to clause 4, or when the Contract is terminated pursuant to clause 5.

2.4. The Hirer shall pay as invoiced for the hire period for all equipment used, loss and insurance charges (if applicable), delivery/removal costs, excess use charges, any damage to or loss of the equipment, cleaning costs (if any), and default interest for late payment.

2.5. If the weekly charge rate is less than the accumulated daily hire charge, the weekly rate will apply.

2.6. Cleaning fees will be assessed and charged if the Hirer returns equipment that the Owner deems (in its sole and absolute discretion) to be excessively dirty or requiring maintenance due to the Hirer's use. The Owner's usual hourly base rate for cleaning fees is \$50.00 per hour. This fee is indicative only and the Owner reserves the right to charge more for complexity.

3. PAYMENT AND DEFAULT INTEREST

3.1. All charges are exclusive of GST unless otherwise indicated and the Hirer shall pay the charges plus GST where indicated.

3.2. For hire of equipment, unless the Hirer has a credit account with the Owner:

3.2.1. the Hirer will be required to pay a bond of not less than 150% of the estimated total charges if requested to by the Owner; and

3.2.2. on return of the equipment in good order and condition, the actual total charges will be calculated and the Hirer will either pay the balance outstanding, or be refunded with the difference between the bond paid by the Hirer and the actual total charges.

3.3. Unless otherwise agreed in writing by the Owner, the Hirer will pay, or the Hirer's account will be charged with, the excess cost of insurance (if any), the amount of which is specified in the Contract (if specified).

3.4. For purchase of equipment, the Hirer will pay the Owner the agreed price. Risk of any loss, damage or deterioration of or to any equipment is to be borne by the Hirer from the date the equipment leaves the Owner's premises.

3.5. For credit account customers, the Owner will send the Hirer an invoice for charges incurred. The Hirer must pay the invoice by the 20th of the month following the date of invoice. The Owner reserves the right to reverse any previously agreed discount for credit account customers if the account is not paid by the due date.

3.6. The Owner will not accept any claim for credit received more than one month after the date of invoice.

3.7. The Owner reserves the right to apply payments received in any manner the Owner determines.

3.8. 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 5% above the Owner's overdraft rate calendar month on all outstanding amounts from the end of the agreed hire period (for cash customers) or from the 20th of the month following date of invoice (for credit account customers), until all monies have been paid in full.

3.9. The Hirer must make all payments due under the Contract (time being of the essence) without set-off or deduction of any kind.

3.10. No credit shall be extended on overdue accounts.

3.11. The Hirer's obligations to pay charges and any other sums to the Owner shall continue despite any mechanical defect in or breakdown of, theft of, or accident or damage caused to the equipment.

4. DELIVERY AND REMOVAL

4.1. Delivery and removal charges are payable by the Hirer and are in addition to the hire/purchase costs.

4.2. If applicable, equipment must be packed up, ready for loading, and assistance rendered for loading.

4.3. The Hirer grants to the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter, and for the Owner to bring the Owner's vehicle at any time onto, the place where the equipment is to be used or is located to deliver and/or remove the equipment either on the expiry of the hire period or on termination of the Contract pursuant to clauses 5.1 or 5.2.

4.4. The Hirer must make any requests for removal by telephone at the completion of the Contract to Ashburton U-Hire, 588 East Street, Ashburton.

4.5. The Hirer must sign the required documentation as requested by the Owner before dropping off any equipment at the above premises and before the Hirer is released from their obligations under these Conditions.

5. RIGHT TO TERMINATE

5.1. The Owner may terminate the Contract by notice with immediate effect if:

5.1.1. the Hirer fails to comply with any term of the Contract or any other agreement with the Owner;

5.1.2. the Owner believes the equipment may be at risk for any reason whatsoever, including the manner of its use by the Hirer, adverse weather or work conditions, the Hirer is unable to, or might be unable to, pay any charge, cost, purchase price or fee in connection with the equipment under these Conditions; or

5.1.3. any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator, statutory manager, administrator or other like person of the whole or any part of the Hirer's assets or business.

5.2. Notwithstanding clause 5.1, the Owner may terminate the hire at any time without reason by giving the Hirer 48 hours' written notice.

5.3. The Hirer indemnifies the Owner against, and shall pay to the Owner upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover any equipment hired or monies payable by the Hirer pursuant to the Contract, or otherwise in connection with the exercise or attempted exercise of any of its rights or remedies under the Contract.

5.4. Upon termination of this Contract under clauses 5.1, 5.2 or any other clause that gives rise to termination, the Hirer shall forthwith deliver up the equipment to the Owner and shall pay to the Owner:

5.4.1. all rental and other monies due to the Owner at the date of termination; and
5.4.2. the balance of all rental yet to accrue from the date of termination to the expiry of the term of the Contract discounted for early payment in such amount as the Owner at its sole discretion allows.

5.5. Termination of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract.

5.6. The parties acknowledge that, notwithstanding the provisions of the Contract Remedies Act 1979, the Hirer shall not be entitled to cancel or otherwise terminate the Contract.

6. ASSIGNMENT

6.1. The Hirer shall not assign, sublet, charge or part with possession of the equipment or any part of it but this shall not prevent employees of the Hirer using the equipment in conformity with these Conditions.

6.2. The Owner may at any time assign its rights or interests, or any part thereof, (whether absolutely, or by way of security) or transfer its obligations or any part thereof, to any person.

7. HIRER'S OBLIGATIONS

7.1. The Hirer shall:

7.1.1. if the equipment is intended to be used in a location or manner which is outside its usual or ordinary use, advise the Owner of 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 Contract (fair wear and tear excepted);

7.1.3. carry out all necessary daily servicing, (including the inspection and/or the supply of all necessary tyre pressures, water, oils, grease and fuel) at the HIRER'S OWN EXPENSE;

7.1.4. satisfy itself that the equipment is suitable for the Hirer's intended use and purposes;

7.1.5. use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment;

7.1.6. if the equipment is hired, 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;

7.1.7. except as permitted by the Consumer Guarantees Act 1993, not bring or threaten to bring any 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;

7.1.8. notify the Owner immediately if the hired equipment is lost, stolen or damaged and shall follow all reasonable instructions of the Owner;

7.1.9. subject to clause 10, be responsible, and indemnify the Owner, for any 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:

7.1.9.1. in the case of damage, the full cost of all repairs to restore the equipment to the condition it was in at the time of hire;

7.1.9.2. in the case of loss, theft or irreparable damage to the equipment however caused, the full cost to the Owner of replacing the equipment (replacement shall be the exact same model of equipment or, if no such model exists, the market equivalent as agreed between the parties); and

7.1.10. in addition to the costs set out in clause 7.1.9, be responsible for and 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;

7.1.11. not remove, deface or obscure any marks of identification or ownership or registration on the equipment.

7.1.12. if any equipment is stolen, then the Hirer will immediately notify the Owner and report the theft to the nearest New Zealand Police Station, Police Officer or Agent of the New Zealand Police. The Hirer will promptly complete all necessary forms, documents and/or submissions as required by the New Zealand Police or any other investigating agent and supply the Owner with copies of all completed documentation immediately.

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 follow any directions from the Owner, local authorities, codes of practice and/or the manufacturer of the equipment relating to the use and safety of the equipment and shall comply with all obligations in relation to the use and control of the equipment and person using said equipment in accordance with Health and Safety at Work Act 2015 and all other relevant legislation and/or regulations.

7.3. The Hirer further warrants that all persons who use the equipment or, who are authorised or allowed to use the equipment have been adequately and properly advised, trained, briefed and/or instructed on how to safely operate the equipment. If any of the equipment requires any licence(s) to be able to be legally operated, then the Hirer warrants that the Hirer, his/her agents, employees, servants or contractors have obtained the appropriate licence(s) to operate the equipment in accordance with all relevant legislation and/or regulations.

7.4. The Owner shall not be required to make any further enquiry as to the competence or qualification of the Hirer and/or the Hirer's agents, employees, servants or contractors and, shall be permitted to rely on the warranty given by the Hirer in clause 7.3.

7.5. 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 signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person signing the Contract failing to have such power or authority.

7.6. The Hirer shall, upon request by the Owner, advise the Owner of the whereabouts of the equipment and allow the Owner reasonable time to inspect and test the equipment and for such purposes the Hirer gives irrevocable leave and licence to the Owner to take possession of and/or remove the equipment, and to enter any premises where the equipment or any part of the equipment may be.

8. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

8.1. The Hirer acknowledges that title to hired equipment remains with the Owner at all times. Equipment purchased from the Owner remains the property of the Owner until paid for in full.

- 8.2. Hire or acquisition of the equipment shall create a security interest in the equipment. This document constitutes a security agreement for the purposes of the PPSA and the provisions of this clause 8 apply. All terms in this clause 8 have the meaning given in the PPSA and section references are to sections of the PPSA.
- 8.3. 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.
- 8.4. The Hirer shall not register a financing change statement or a change demand in respect of any registered security interest in the equipment.
- 8.5. 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.
- 8.6. The Hirer waives its rights under sections 114(1) (a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 148 of the PPSA.
- 9. SECURITY AND CHARGE**
- 9.1. In consideration of the Owner agreeing to hire the equipment to the Hirer, the Hirer 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 Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these Conditions (including but not limited to, the payment of any monies).
- 9.2. The Hirer indemnifies the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under this clause.
- 9.3. The Hirer irrevocably appoints the Owner and each director of the Owner as the Hirer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Hirer's behalf.
- 10. INSURANCE AND LIABILITY**
- 10.1 The Hirer is liable for:
- 10.1.1 any loss of, or damage to the equipment and accessories to the equipment;
- 10.1.2 any consequential damage, loss or costs incurred by the Owner, including any salvage costs, loss of ability to re-hire and loss of revenue arising from loss or damage to the equipment;
- 10.1.3 any loss of, or damage to, vehicles and property of third parties, arising during the term of the Contract.
- 10.2. Subject to payment by the Hirer of the excess (clause 10.6) and except for the exclusions set out in clauses 10.3 to 10.4 and subsections thereof, the Hirer's liability under clause 10.1 is covered by the Owner's insurance PROVIDED THAT the Hirer:
- 10.2.1. has at all times acted reasonably and with reasonable care;
- 10.2.2. has delivered to the Owner (within 24 hours of the time when the Hirer first becomes aware of the loss of or damage to the equipment) a complete correct written report of the circumstances of such loss of or damage to the equipment, including, in the case of any loss appearing to result from any criminal act, an applicable police complaint acknowledgement form; and
- 10.2.3. Rendered such assistance and done such other things as the Owner shall have reasonably required for the purposes of enabling the Owner to recover such loss or damage, including from any potentially responsible third party.
- 10.3. The Hirer acknowledges that the Owner's insurance cover DOES NOT cover:
- 10.3.1. Theft of or criminal damage to equipment unless reasonably locked and secured;
- 10.3.2. Damage or loss due to misuse, abuse or overloading of the equipment or failure to take reasonable care of it, including any overloading of any motors or other electrical appliances or devices;
- 10.3.3. Damage caused to tyres and tubes by blowout, bruises, cuts, kerbing or other caused arising from the use of the equipment;
- 10.3.4. Loss or damage resulting from lack of lubrication or other normal servicing of the equipment;
- 10.3.5. Loss or damage of tools, digger buckets, accessories, grease guns, hoses and similar, electrical cords, welding cable, oxygen and/or acetylene bottles, pneumatic tools, steels and other similar accessories;
- 10.3.6. Loss or damage to plant where such loss or damage is due to any incident or accident involving (in any way) water;
- 10.3.7. Loss or damage of the equipment arising from a breach by the Hirer of the conditions of the Contract;
- 10.3.8. Loss or damage from the use of the equipment in violation of any statute, regulation or by-law; or
- 10.3.9. Loss or damage at any time when the equipment was operated or used beyond the term of the Contract or any agreed extension of the term of the Contract.
- 10.4. In addition to the above, special conditions or exclusions may apply depending on the nature or location of the Hirer's use of the equipment and these will be notified to the Hirer prior to the equipment leaving the Owner's premises. Any breach of those special conditions will constitute a breach of the Contract.
- 10.5. The excess payable by the Hirer will be specified in the Hire Document or, the Owner will draw the Hirer's attention to clause 10. The excess payable by the Hirer is for each and every incident involving the equipment. If the damage is excluded under the Owner's insurance, the excess will be considered part payment toward the total damage cost and any additional cost will be charged to the Hirer.
- 10.6. **Excess:** In the event of any loss, theft or damage to the equipment under clause 10 the Hirer must pay an excess charge. The excess charge will be as follows: \$500.00 if the Hirer is over 25 years of age, \$1,000.00 if the Hirer is under 25 years of age and \$1,500.00 if the Hirer is under 21 years of age.
- 11. LIMITATION OF LIABILITY, INJURY OR DAMAGE TO HIRER, THIRD PERSON OR PROPERTY**
- 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, the use by the Hirer or, the Hirer's agents of the equipment, 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.
- 11.2. Subject to the exclusion of liability in clause 11.1 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 liability as a result of tort, including negligence) will not exceed:
- 11.2.1. in the case of any equipment purchased by the Hirer, an amount of \$2,500; and
- 11.2.2. in the case of any equipment hired, 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 acquiring or hiring the equipment for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 do not apply.
- 11.5. If the Hirer is purchasing equipment, then except as prohibited by law, all guarantees in respect of the equipment, whether express or implied, are excluded.
- 11.6. 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. For the avoidance of doubt, no warranty shall be implied by the description of the equipment on the face of this form or by the provision of information relating to the proper operation and maintenance of the equipment. Any equipment sold is second hand and is sold as is.
- 12. NOTICES**
- 12.1. Notices shall be properly served on a person if delivered by hand or left at or posted in any prepaid letter addressed to that person at either the job address or any other address of the Hirer specified on the face of this Contract or, the Customer Application for Credit Account. Service by post shall be deemed to be effected on the second day after the day on which the notice was posted.
- 13. GENERAL**
- 13.1. 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. A reference to a clause or sub clause is a reference to a clause or sub clause hereof. A reference to Owner includes its servants, agents, successors and assigns. The word "including" does not imply limitation.
- 13.2. 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.
- 13.3. This Contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.
- 14. PRIVACY ACT 1993**
- 14.1. If the Hirer is an individual, this clause 14.1 applies. The Owner requires personal information and will collect and hold personal information about the Hirer, principally for the purpose of evaluating the hire of equipment by the Hirer. The Hirer's application to hire equipment may be declined or the hire terminated if the Hirer fails to provide requested personal information. The Hirer can access and seek correction of any personal information by contacting the Owner. 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. The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire contracts entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding the Contract if the Hirer does not comply with its obligations.
- 14.2. The Hirer and each person who signs the Owner's Application for Credit authorises the Owner:
- 14.2.1. to collect, retain and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or such other signatory's creditworthiness;
- 14.2.2. to collect, retain, and use information about the Hirer or such other signatory from GPS trackers that are installed on specific equipment for the purpose of tracking the equipment;
- 14.2.3. to disclose information about the Hirer or such other signatory:
- 14.2.3.1. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Hirer's obligations to the Owner; and/or
- 14.2.3.2. to such persons as may be necessary or desirable to enable the Owner to exercise any rights under the Contract.
- 15. RETENTION OF TITLE (IN THE EVENT ANY EQUIPMENT IS SOLD)**
- 15.1. The legal and equitable ownership of any equipment supplied will remain with the Owner until payment has been made in full of the purchase price for the equipment, and of all monies for the time being due and owing to the Owner.
- 15.2. If the equipment has been mixed with or incorporated into other goods or products so that it is impossible or impracticable to remove the equipment supplied then the Owner will be co-owner of the mixed goods or new products in proportion to the contribution made by the Owner's equipment to the mixed goods or new products.
- 15.3. If the Hirer resells the equipment regardless of any period of credit, before payment is made of all sums owing (or payment simply incorporating those goods) to the Owner, then:
- 15.4. As between the Hirer and its purchaser, the Hirer is a principal and not the agent of the Owner.
- 15.5. The Hirer will pay all proceeds of sale of the goods to its account with the Owner, and the Hirer will pay or deal with the proceeds in accordance with any directions given by the Owner. This will occur whether the account is in credit or debit at the relevant time.
- 15.6. Until the Hirer accounts to the Owner, the proceeds of sale are deemed to be held by the Hirer in trust for the Owner.
- 15.7. The Owner is entitled to demand that the Hirer exercise all of its available rights to enforce payment by the person or persons to whom the goods have been or will be sold or supplied. However, that will not affect any other rights and remedies of the Owner as against Hirer.
- 15.8. If default is made in the payment of the purchase price of the goods or of the other money referred to, the Owner may repossess the goods and dispose of them as it sees fit, may stop any further deliveries, and may cancel any contract with the Hirer. For the purposes of repossession the Owner and its agents are irrevocably authorised to enter any premises of the buyer or any third party and the buyer agrees to indemnify the Owner and its agents for any liability arising from any act or trespass committed by such entry. If before or after default the equipment is incorporated in other goods, but in either case remain identifiable and can be removed (with or without damage to the goods or other things) the Owner's right of removal shall not be extinguished by their being so incorporated or attached.
- 15.9. For the avoidance of doubt, under clauses 15 and 16, the term 'Hirer' will mean 'Purchaser' for all intents and purposes.
- 16. EXCLUSION OF WARRANTY & LIABILITY**
- 16.1. Except as expressly set out in these Conditions, all representations, conditions and warranties (express or implied) applying between the Owner and the Hirer, whether statutory or otherwise are excluded.
- 16.2. The Hirer acknowledges that any equipment purchased from the Owner is second hand and purchased 'as is where is'. The Hirer acknowledges that if any equipment is purchased from the Owner, the Hirer is satisfied of the condition, description and fitness for purpose of the equipment solely from their investigation, and inspection of the equipment.