

1. Definitions

- 1.1 “Agent” shall mean Aotearoa Rental Enterprises Limited T/A Appliance Rentals, its successors and assigns or any person acting on behalf of and with the authority of Aotearoa Rental Enterprises Limited T/A Appliance Rentals.
- 1.2 “Hirer” shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.
- 1.3 “Equipment” shall mean all Equipment (including any accessories) supplied on hire by the Agent to the Hirer (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 the Agent to the Hirer.
- 1.4 “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 the Agent to the Hirer.
- 1.5 “Price” shall mean the cost of the hire of the Equipment as agreed between the Agent and the Hirer subject to clause 6 of this contract.

2. Acceptance

- 2.1 The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for or accepts delivery of any Equipment.
- 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 These terms and conditions may only be amended with the Agent’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Hirer and the Agent.

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. Electronic Transactions Act 2002

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Change in Control

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

6. Price and Payment

- 6.1 At the Agent’s sole discretion, the Price shall be either:
 - (a) as indicated on invoices provided by the Agent to the Hirer in respect of Equipment supplied; or
 - (b) the Agent’s current Price, at the date of delivery of the Equipment, according to the Agent’s current price list; or
 - (c) the Agent’s quoted price (subject to clause 6.2) which shall be binding upon the Agent provided that the Hirer shall accept the Agent’s quotation in writing within thirty (30) days.
- 6.2 The Agent reserves the right to change the Price in the event of a variation to 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.
- 6.3 At the Agent’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 Hirer by within thirty (30) days of the return of the Equipment, provided that the Hirer has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Hirer under clause 6.13 and any outstanding balance thereof shall be due as per clause 6.13(a).
- 6.4 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.
- 6.5 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.
- 6.6 At the Agent’s sole discretion, payment for approved Hirers shall be made by instalments in accordance with the Agents delivery/payment schedule.
- 6.7 At the Agent’s sole discretion, payment for approved Hirer’s shall be due thirty (30) days following the date of the invoice.
- 6.8 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;

- 6.9 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Hirer and the Agent.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Hirer must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent under this or any other agreement for the hire of the Equipment. The Hirer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Hirer pays the Price. In addition, the Hirer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.11 Receipt by the Agent 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.
- 6.12 **Deposit**
(a) A non-refundable deposit is required prior to pick up and/or delivery of the Goods. The deposit payment forms part of the total payment due for the Goods and is separate from the bond payment.
- 6.13 **Refundable Bond**
(a) A refundable bond is payable for Goods provided on hire (8% of the Contract Price) and will be refunded if the Goods are returned in good order and working condition. If the Goods returned are unclean, missing items, stained, or damaged in any way, the bond will be retained by the Agent. The refund will be processed within twenty-eight (28) days of the expiry/return date of the Goods, whichever occurs first.

7. Hire Period

- 7.1 The minimum period for which the Equipment can be hired is six (6) months (the "Minimum Hire Period").
- 7.2 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.
- 7.3 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.
- 7.4 The responsibility of the Hirer for the security of the Equipment continues until the Equipment is returned or collected.
- 7.5 The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.
- 7.6 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Agent confirms special prior arrangements in writing. 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.

8. Delivery

- 8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that the Agent (or the Agent's nominated carrier) delivers the Equipment to the Hirer's nominated address even if the Hirer is not present at the address.
- 8.2 The Hirer must take delivery by receipt or collection of the Equipment whenever they are tendered for delivery. In the event that the Hirer is unable to take delivery of the Equipment as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.
- 8.3 Any time or date given by the Agent to the Hirer is an estimate only. The Hirer must still accept delivery of the Equipment even if late and the Agent will not be liable for any loss or damage incurred by the Hirer as a result of the delivery being late.

9. Risk

- 9.1 The Agent retains property in the Equipment nonetheless; all risk for the Equipment passes to the Hirer on delivery.
- 9.2 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.
- 9.3 The Hirer will insure, or self-insure, the Agent'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.
- 9.4 The Hirer accepts full responsibility for and shall keep the Agent 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 Hirer or any other persons.

10. Title

- 10.1 The Equipment is and will at all time remain the absolute property of the Agent.
- 10.2 If the Hirer fails to return the Equipment to the Agent then the Agent or the Agent's agent may (as the invitee of the Hirer) enter upon and into land and premises owned, occupied or used by the Hirer, 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 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.

11. Personal Property Securities Act 1999 (“PPSA”)

- 11.1 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 and/or collateral (account) – being a monetary obligation of the Hirer to the Agent for Services – that have previously been supplied and that will be supplied in the future by the Agent to the Hirer.
- 11.2 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, 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 the Agent.
- 11.3 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.
- 11.4 The Hirer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 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.
- 11.6 The Hirer shall unconditionally ratify any actions taken by the Agent under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of the Agent agreeing to supply the Equipment, 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 terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Hirer indemnifies the Agent from and against all the Agent’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent’s rights under this clause.
- 12.3 The Hirer irrevocably appoints the Agent and each director of the Agent as the Hirer’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 Hirer’s behalf.

13. Hirer’s Responsibilities

- 13.1 The Hirer shall:
- (a) maintain the Equipment as is required by the Agent.
 - (b) notify the Agent immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (c) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - (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 fully licensed;
 - (e) comply with all WorkSafe guidelines relating to the Equipment and its operation;
 - (f) 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;
 - (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, plate 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 not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (i) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 Immediately on request by the Agent the Hirer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or 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 the Agent's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
- (f) any lost hire fees the Agent would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (g) any insurance excess payable in relation to a claim made by either the Hirer or the Agent in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Hirer and irrespective of whether charged by the Hirer's insurers or the Agent's.

13.6 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), clause 11 shall apply, and this agreement a security agreement for the purposes of PPSA generally, and in particular Section 36.

14. Defects

14.1 The Hirer shall inspect the Equipment on delivery and shall within forty-eight (48) hours notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Hirer shall afford the Agent an opportunity to inspect the Equipment within a reasonable time following delivery if the Hirer believes the Equipment is defective in any way. If the Hirer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Agent has agreed in writing that the Hirer is entitled to reject, the Agent's liability is limited to replacing the Equipment.

15. Warranty

15.1 No warranty is given by the Agent as to the quality or suitability of the Equipment for any purpose and any implied warranty is expressly excluded. The Hirer shall indemnify and hold harmless the Agent in respect of all claims arising out of the use of the Equipment.

16. Consumer Guarantees Act 1993

16.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded).

17. Default and Consequences of Default

17.1 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 the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Hirer owes the Agent any money the Hirer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies the Agent may have under this contract, if the Hirer has made payment to the Agent and the transaction is subsequently reversed, the Hirer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Hirer's obligations under this agreement.

17.4 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) under these terms and conditions the Agent may suspend or terminate the supply of Equipment to the Hirer. The Agent will not be liable to the Hirer for any loss or damage the Hirer suffers because the Agent has exercised its rights under this clause.

17.5 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Hirer will be unable to make a payment when it falls due;
- (b) the Hirer 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

18. Cancellation

18.1 The Agent 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 the Agent shall repay to the Hirer any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.

18.2 In the event that the Hirer wishes to cancel this agreement then the Hirer shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation or a direct result of the cancellation.

19. Privacy Act 1993

19.1 The Hirer authorises the Agent or the Agent's agent to:

- (a) access, collect, retain and use any information about the Hirer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Hirer's creditworthiness; or

- (ii) for the purpose of marketing products and services to the Hirer.
- (b) 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 purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Hirer.
- 19.2 Where the Hirer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 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.

20. General

- 20.1 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.
- 20.2 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 New Zealand.
- 20.3 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.
- 20.4 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 Agent exceed the Price of the Equipment.
- 20.5 The Hirer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Hirer by the Agent.
- 20.6 The Agent may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 20.7 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Hirer of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.9 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.