

Hire & Sales Contract Terms and Conditions (“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 Hirequip Ltd (“the Owner”) and the person 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 Hirequip’s website (www.hirequip.co.nz) and shall apply with effect from the date that such amended Conditions are placed on the website unless the amended Conditions specify a later date from which they are to apply.

2. CHARGES

- Equipment may be hired for: a) half day period, b) daily, c) weekly or d) 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 maximum usage time as set out in clause 2.2, and subject always to the Owner’s rights in clause 5. Certain equipment may carry minimum 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.
- Hire periods and maximum periods of usage are:
 - “Minimum period Half Day” means 4 hours (maximum usage 4 hours) or overnight providing the equipment is picked up after 4.00pm and returned by 8.30am the following day.
 - “Daily” means 24 hours (maximum usage 8 hours)
 - “Weekly” means 6 days (maximum usage 48 hours)
- The hire period begins from the time the equipment leaves the Owner’s premises and runs until the equipment is returned to the Owner at the place of hire or the Contract is terminated pursuant to clause 5.
- The Hirer shall pay as invoiced for the hire period for all materials used, loss and damage waiver charges (if applicable), delivery/removal costs, excess use charges, damage to or loss of the equipment, cleaning costs (if any), default interest for late payment.
- If the weekly charge rate is less than the accumulated daily hire charge, the weekly rate will apply.
- Returned equipment is expected to be clean. Cleaning fees will be assessed and charged if the Hirer returns equipment that the Owner deems to be excessively dirty.

3. PAYMENT AND DEFAULT INTEREST

- All charges are exclusive GST unless otherwise indicated and the Hirer shall pay the charges plus GST where indicated.
- For hire of equipment, unless the Hirer is a charge account customer:
 - The Hirer will be required to pay a deposit of not less than the estimated total charge.
 - On return of the equipment in good order and condition, the actual total charges will be calculated and the Hirer will either pay or be refunded with the difference between the deposit and the actual total charge.
- The Hirer will pay, or the Hirer’s account will be charged, the insurance damage waiver (“Damage Waiver”), the amount of which is specified in the Contract (see clause 10).
- For purchase of equipment, the Hirer will pay the Owner the agreed price. Risk passes on delivery of the equipment.
- Any agreed discount for charge account customers is claimable ONLY if the account is paid by the 20TH OF THE MONTH following the date of invoice.
- The Hirer must not make any claim for credit more than 14 days after the date of invoice.
- If no details of invoices being paid accompany a payment, the Owner reserves the right to apply payments received against the oldest invoices outstanding from the Hirer. The Owner will not be obliged to reallocate such payments should details be subsequently provided.
- Without prejudice to the Owner’s other remedies under these conditions at law or otherwise, the Hirer will pay default interest at the rate of 2% per calendar month on all outstanding amounts from the end of the agreed hire period (for cash customers) or from the 20th of the month following date of invoice (for charge account customers) until all monies have been paid in full.
- No credit shall be extended on overdue accounts.
- The Hirer shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or an attempted exercise of any of its rights or remedies under the Contract, including commissions and legal costs on a solicitor and client basis.
- The Hirer must make all payments due under the Contract without set-off or deduction of any kind.

4. DELIVERY AND REMOVAL

- Delivery and removal charges payable by the Hirer are in addition to the hire/purchase costs.
- The Hirer authorises the Owner to bring the Owner’s vehicle 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 the breach by the Hirer of any term in these Conditions. The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner’s actions under this clause.
- The Hirer must make any requests for removal by telephone at completion of the hire to the initiating depot.

5. OWNERS RIGHT TO CANCEL

- The Owner may terminate the Contract by notice with immediate effect if the Owner believes the equipment to be at risk for any reason whatsoever including, but not limited to, the manner of its use by the Hirer or adverse weather or work conditions, or that the Hirer is unable to, or might be unable to, pay any hire charge or purchase price.
- The Owner may terminate the Contract by notice with immediate effect if any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or other like person of the whole or any part of the Hirer’s assets or business.
- The Hirer grants the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter at any time onto any place where the equipment is situated or thought to be situated to remove the equipment in the event the Contract is terminated.
- The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any equipment hired or monies payable by the Hirer pursuant to the Contract
- The Owner will not be liable to the Hirer or any other person for any loss suffered or liability incurred arising from termination of the Contract or repossession of the equipment
- Cancellation of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract

6. NO ASSIGNMENT

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

7. HIRER’S OBLIGATION

- Subject to clause 10 (Insurance - Damage Waiver on Hire), in the case of hired equipment, the Hirer is responsible for any loss or damage to the equipment from the time the Hirer takes possession of the equipment until it is returned to the Owner’s possession. The Hirer shall notify the Owner in writing immediately if the equipment is lost or damaged and shall follow all reasonable instructions of the Owner.
- In the case of damage to the equipment, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost of all repairs to restore the equipment to the condition it was in at the time of hire.
- In the case of loss of or irreparable damage to the equipment however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost to the Owner of replacing the equipment. The cost of the replacement shall be no less than the management book value of the equipment.
- In addition to the costs set out in clauses 7.2 and 7.3, the Hirer shall be responsible for and shall indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the equipment for hire due to loss or damage. The costs for lost revenue shall not exceed the equivalent prevailing rate for 120 days hire of the equipment.
- The Hirer shall:
 - Take proper and reasonable care of the equipment, if the equipment is hired, return it (to the place of hire, unless otherwise specified in the Contract) in good order and condition; and carry out all necessary servicing, (including by way of example the supply of all necessary tyre pressures, oils, grease and fuel) at the HIRER’S OWN EXPENSE; and
 - satisfy themselves that the equipment is suitable for the intended use; and
 - use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment; and
 - if the equipment is hired, immediately notify the Owner by telephone if the equipment breaks down or if any warning light is activated; and
 - except as permitted by the Consumer Guarantees Act 1993 not bring or threaten to bring claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer’s use of the equipment.
- 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 or from 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 to the Health and Safety in Employment Act 1992 and all other relevant legislation.
- If the Hirer is not an individual, the person who signs the Contract on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations on the Hirer. The person so signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person so signing the Contract failing to have such power or authority.

8. VEHICLES

- If the equipment being hired is a vehicle, then notwithstanding any other provision in the Contract including these Conditions, the Hirer shall:
 - Ensure that the vehicle is driven during the period of hire only by the Hirer and persons named on the Contract and only if they hold a current full driver’s licence appropriate for the vehicle at the time when they are driving the vehicle.
 - As soon as possible, where the vehicle is damaged or requires repair or salvage, whether because of an accident or breakdown, advise the Owner of the full circumstances by telephone.
 - Not arrange or undertake any repairs or salvage (excluding servicing under clause 7.5.2) without the authority of the Owner except to the extent that the repairs or salvage are necessary to prevent further damage to the vehicle or to other property.
 - Ensure that no person shall interfere with the distance recorder or speedometer or, except in any emergency, any part of the engine, transmission, braking, or suspension systems of the vehicle.

- Not use or permit the vehicle to be used for the carriage of passengers for hire or reward unless the vehicle is hired with the knowledge of the Owner for use in a passenger service licensed under Part 4A of the Land Transport Act 1998.

8.1.6. Not:

- 8.1.6.1. sublet or hire the vehicle to any other person;
- 8.1.6.2. permit the vehicle to be operated outside the Hirer’s authority;
- 8.1.6.3. operate the vehicle or permit it to be operated, in circumstances that constitute an offence by the driver against any of sections 56, 57 and 58 of the Land Transport Act 1998 (which relates to driving under the influence of drink or drugs);
- 8.1.6.4. operate the vehicle or permit it to be operated in any race, speed test, rally or contest;
- 8.1.6.5. operate the vehicle or permit it to be operated in breach of the Transport Act 1962, the Land Transport Act 1998, the Traffic Regulations 1976 or any other Act, regulations, rules or bylaws relating to road traffic;
- 8.1.6.6. operate the vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the vehicle.

- 8.1.7. Be responsible for all penalties relating to traffic offences incurred during the hire period, including without limitation speeding, parking, toll and traffic signal offences. The Owner will forward a copy of any relevant infringement notices it receives, along with the copy of the Contract (including these Conditions) to the Hirer as soon as practicable and advise the Hirer that if the Owner receives a reminder notice of the infringement, it will deduct payment from the Hirer’s credit card or account. If the Owner receives a relevant reminder notice without having received an infringement notice, it will forward a copy of the reminder notice, along with the copy of the Contract (including these Conditions) to the Hirer as soon as practicable and advise the Hirer that the Owner will deduct payment from the Hirer’s credit card or account. The Hirer acknowledges that an administration fee will be applied by the Owner to the Hirer to process these infringements and deduct payment from the Hirer’s credit card or account. The Hirer acknowledges that it has the right to challenge, complain about, query or object to the alleged offence to the authority issuing the infringement notice and to seek a court hearing within 56 days of the date of any infringement notice and 28 days from the issue of a reminder notice.
- 8.1.8. Ensure that a copy of the Contract (including these Conditions) is kept within the vehicle throughout the hire period and produced without delay for inspection upon demand by an enforcement officer.

9. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- The Hirer acknowledges that title to the equipment remains with the Owner at all times. Equipment purchased from the Owner remains the property of the Owner until paid in full.
- Hire or acquisition of equipment may create a security interest in the equipment. If so, the provisions of this clause 9 apply. All terms in this clause 9 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 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.
- 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.
- The Hirer waives its rights under sections 114(1) (a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA.

10. INSURANCE - DAMAGE WAIVER ON HIRE

- If the Hirer has paid the Damage Waiver the Owner will waive the Hirer’s liability (in terms of clause 7) for accidental damage PROVIDED THAT the Hirer has at all times acted reasonably or theft of any equipment from secure premises PROVIDED FURTHER THAT in the case of theft the Hirer shall immediately notify the Police (taking the name of the Police contact) and the Owner.
- For the avoidance of doubt the Hirer acknowledges that the Damage Waiver charge will not cover damage, injury or loss due to mysterious disappearance, loss or damage resulting from negligent acts or omissions of the Hirer, earthquake and war damage, punctures, and damage to tyres, cabin windows and glass, panel damage, breakages to glassware, crockery or cutlery, and, without limiting the above, in the case of vehicles:
 - where the driver/operator is under the influence of alcohol or any drug which affects his or her ability to operate the vehicle/equipment;
 - the vehicle/equipment is in an unsafe or unroadworthy condition that arose during the hire period that caused or contributed to the loss or damage and the driver/operator was aware or ought to have been aware of the unsafe or unroadworthy condition of the vehicle/equipment;
 - the vehicle/equipment is operated in any speed test, race or contest;
 - the vehicle/equipment is driven/operated by any person who at the time of driving/operated the vehicle/equipment does not have an appropriate licence, or is disqualified from holding a licence;
 - the vehicle/equipment is driven/operated outside the hire period or any extension of the term; or
 - to personal belongings of the Hirer or any third party within the vehicle/equipment.
- Special conditions or exclusions may apply depending on the nature or location of the Hirer’s use of the equipment and these should be notified to the Owner prior to the equipment leaving the Owner’s premises. In particular, Damage Waiver cover does not apply for hire of equipment used below the high tide mark or offshore either within or outside New Zealand’s territorial waters. In these instances, the Hirer is 100% responsible for any damage or loss arising.
- The Owner requires the Hirer to take the Owner’s damage waiver unless written confirmation of suitable insurance cover is provided by the Hirer prior to the Hirer taking possession of the equipment.
- Excess: All claims are subject to an excess charge of \$1,000 plus GST for all registered rolling plant (motor vehicles), all other equipment, 33.3% of full replacement cost, with a minimum of \$100 plus GST applying, up to a maximum of \$1,000 plus GST for any one item of equipment.

11. LIMITATION OF LIABILITY

- In entering into the Contract, the Hirer acknowledges that the Owner has no liability to the Hirer for any indirect or consequential loss or damage or for any loss of profit (or) any other form of economic loss) arising in connection with the Contract (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law.
- 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, but not limited to, liability as a result of tort, including negligence) will not exceed:
 - in the case of any equipment purchased by the Hirer, an amount of \$2,500; and
 - 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.
- 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
- If the Hirer is acquiring the services for the purposes of a business as defined in the Consumer Guarantees Act 1993, clauses 11.1 and 11.3 are subject to any liability which arises under the Act. If the Hirer is acquiring or hiring the equipment for the purposes of a business, the provisions of that Act do not apply.
- 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.

12. GENERAL

- 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 and agents.
- If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby to the intent that the Contract should be construed as if the provision or part thereof in question has been deleted.
- Equipment purchased from the Owner remains the property of the Owner until paid for in full.

13. PRIVACY ACT 1993

- If the Hirer is an individual, this clause 13.1 applies. In relation to the Contract the Owner will collect personal information about you. The information is principally collected to evaluate the hire of equipment that you seek. The information is collected and held by the Owner. The failure to provide the information on the front of the Contract may result in your application to hire equipment being declined or the Contract subsequently being terminated by the Owner. The Hirer has rights of access to personal information contained in the Contract, subject to the provisions of the Privacy Act 1993. 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.
- The Hirer and each person who signs the Owner’s Application for Credit authorises the Owner:
 - 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;
 - To disclose information about the Hirer or such other signatory:
 - 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;
 - To such persons as may be necessary or desirable to enable the Owner to exercise any power, enforcement or attempted enforcement of the Owner’s rights, remedies and powers under the Contract including these Conditions.