



HIRE CONTRACT CONDITIONS

Kiwi Hire and Sales agrees to hire Equipment to the Customer on the terms set out in this document. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Kiwi Hire and Sales) a Hire Schedule and such other documents as Kiwi Hire and Sales may require. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Kiwi Hire and Sales and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. Kiwi Hire and Sales may in its absolute discretion decline to hire Equipment to the Customer at any time.

These Hire Contract Conditions may be changed by Kiwi Hire and Sales from time to time by Kiwi Hire and Sales giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Kiwi Hire and Sales does any of the following; (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website www.khs.co.nz; or (c) displays the amended terms at premises from which Kiwi Hire and Sales conducts hire operations.

1. Interpretation of Words in this Contract

“Commencement” is the date when the Customer takes possession of the Equipment.

“Equipment” is any kind of equipment, vehicles or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: cleaning; cooling and/or heating; entertainment; waste management; landscaping and gardening; plumbing; fencing and covering; lifting; access; air and air compression; pumping and fluid management; welding; compaction; concrete & masonry; flooring; earthmoving; floor care and cleaning, generation and power distribution; ground equipment and shoring; ladders and scaffolding; propping; lighting; materials handling; offshore pumps; safety equipment; storage; site accommodation including portable buildings and portable toilets; traffic management including road barriers; signage; vehicles including trucks, vans and trailers, and includes tools and parts and accessories for any of the foregoing.

“Hire Charge” is the amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.

“Hire Period” is the period of hire from commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case, this can only be done if the Customer requests it and if Kiwi Hire and Sales agrees. Kiwi Hire and Sales may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period. A one day Hire Period is based on a maximum of 6 hours usage and the customer must return the equipment at the same time on the following day. This period is agreed upon at the discretion of Kiwi Hire and Sales. Any Hire Period which exceeds a one-day period will automatically be charged for another period of hire.

Long term hire periods are agreed upon at the discretion of Kiwi Hire and Sales with the long-term customer.

“Hire Schedule” is a document which Kiwi Hire and Sales may require the Customer to sign (or accept in a way Kiwi Hire and Sales requires) including particulars of the Equipment and the Hire Period and such other information as Kiwi Hire and Sales may decide to require.

“Kiwi Hire and Sales” is the company or companies listed on the Hire Schedule.

“Kilometre Charge” is the amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Kiwi Hire and Sales, travelled during the Hire Period.

“Motor Vehicle” is a truck or utility but not any other equipment such as a scissor lift, trailer or bobcat.

2. Kiwi Hire and Sales Obligations

Kiwi Hire and Sales will:

- (a) Allow the Customer to take and use the Equipment for the Hire Period;
- (b) Provide the Equipment to the Customer clean and in good working order;
- (c) Collect the Equipment within 5 days of being requested to do so by the Customer.

NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain a customer pick up confirmation from Kiwi Hire and Sales.

3. Obligations of the Customer

The Customer must:

- 3.1 Deliver the Equipment to Kiwi Hire and Sales when it is due back;
- 3.2 Return the Equipment to Kiwi Hire and Sales clean and in good repair;
- 3.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4 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 Kiwi Hire and Sales or posted on the Equipment;
- 3.5 Indemnify Kiwi Hire and Sales for all injury and/or damage caused to persons and property in relation to the Equipment and its operation;
- 3.6 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;
- 3.7 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold any relevant current certificate of competency and/or are fully licensed to operate or erect such Equipment;
- 3.8 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all occupational health and safety laws relating to the Equipment and its operation;
- 3.9 Safely secure all items loaded in or on the Equipment or in or on the Customer’s vehicle, and indemnify Kiwi Hire and Sales in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- 3.10 Operate the Equipment with an adequate motor vehicle and/or power source;
- 3.11 In the event of the Equipment being stuck or not operating correctly, Kiwi Hire and Sales are to be called and have first option to recover the Equipment.
- 3.12 Report and provide full details in writing to Kiwi Hire and Sales of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.
- 3.13 On agreement of long term lease the customer must fulfil day to day maintenance requirements of Kiwi Hire and Sales’ equipment over the duration of the Hire Period.

The Customer must NOT;

- 3.14 Tamper with, damage or repair the Equipment;
- 3.15 Lose or part with possession of the Equipment;
- 3.16 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 3.17 Allow any person to drive a Motor Vehicle if the person:
 - (a) Only holds a learners or restricted driver’s licence, or does not hold a full driver licence to drive that class of Motor Vehicle; or
 - (b) Is affected by drugs and/or alcohol;
- 3.18 Exceed the recommended or legal load and capacity limits of the Equipment;
- 3.19 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

4. No Assignment by Customer

4.1 This agreement is personal to the Customer and is not capable of assignment by the Customer, but this shall not prevent employees of the Customer using the Equipment in accordance with the terms of this agreement. Kiwi Hire and Sales may assign its rights under this agreement without the consent of the Customer or any guarantor.

5. Payments by the Customer to Kiwi Hire and Sales

5.1 On or about Commencement (or as otherwise specifically agreed with Kiwi Hire and Sales), the Customer will pay the Hire Charge.



5.2 Immediately on request by Kiwi Hire and Sales, the Customer will pay:

- (a) The new list price of any Equipment which is for whatever reason not returned to Kiwi Hire and Sales. (NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment),
- (b) All costs incurred in cleaning the Equipment;
- (c) The full cost of repairing any damage to the Equipment, unless expressly agreed otherwise in this Contract;
- (d) Stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from Kiwi Hire and Sales supply or the Customer's use of the Equipment;
- (e) All costs incurred by Kiwi Hire and Sales in delivering and recovering possession of the Equipment; (f) A late payment fee calculated daily at 3% per month on all amounts owing by the Customer not paid on time;
- (g) The Kilometre Charge and any additional Hire Charges;
- (h) The cost of fuels and consumables provided by Kiwi Hire and Sales and not returned by the Customer;
- (i) Any expenses and legal costs (including commission payable to a commercial agent) incurred by Kiwi Hire and Sales in enforcing this Contract;
- (j) All costs of repairing or replacing tyres, including road service; and
- (k) If any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

5.3 Without limiting the ability of Kiwi Hire and Sales to recover all amounts owing to it, the Customer irrevocably authorises Kiwi Hire and Sales to charge any amounts owing by the Customer to any credit card or account details of which are provided to Kiwi Hire and Sales.

6. Ownership / Retention of Title

6.1 All Equipment supplied by Kiwi Hire and Sales to the Customer under this agreement shall remain the property of Kiwi Hire and Sales;

7. PPSA Law

7.1 If a 'security interest' for the purposes of the Personal Property Securities Act 1999 ("PPSA") arises in relation to the Equipment provided to the Customer under this agreement whether created or provided for by a lease for a term of more than 1 year or otherwise ("security interest") then the terms of this clause 7 shall apply.

7.2 The Customer must do anything (such as obtaining consents and signing documents) which Kiwi Hire and Sales requires for the purposes of:

- (a) Ensuring that Kiwi Hire and Sales' security interest is enforceable, perfected and otherwise effective under the PPSA;
- (b) Enabling Kiwi Hire and Sales to gain first priority for its security interest; and (c) Enabling Kiwi Hire and Sales to exercise rights in connection with the security interest.

7.3 The Customer agrees that nothing in sections 114(1)(a), 133 or 134 of the PPSA applies to this Agreement, and waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA.

7.4 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else or grant or create any security interest in the Equipment unless Kiwi Hire and Sales (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Kiwi Hire and Sales and must be expressed to be subject to the rights of Kiwi Hire and Sales under this agreement. Customer may not vary sub-hire without the prior written consent of Kiwi Hire and Sales (which may be withheld in its absolute discretion).

7.5 Customer must ensure that Kiwi Hire and Sales is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

7.6 To assure performance of its obligations under this agreement, the Customer hereby gives Kiwi Hire and Sales an irrevocable power of attorney to do anything Kiwi Hire and Sales consider the Customer should do under this agreement. Kiwi Hire and Sales may recover from Customer the cost of doing anything under this clause 7, including registration fees.

8. INSURANCE WAIVER

Insurance is automatically charged at 8% of the hire charge unless evidence of own insurance, covering the full value of the machine, is supplied by way of cover note to the owner before hire commences. The 8% insurance surcharge does not cover panel and glass damage. The hirer is responsible for the \$5,000.00 excess on insurance claims, along with the down time incurred while the machine is under repair, this will be calculated until such time as the machine is fully operational. THE INSURANCE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances:

- (a) Where, in the case of theft, the Customer has failed to properly secure or lock the Motor Vehicle;
- (b) Where, in the case of theft, the Customer has failed to submit to Kiwi Hire & Sales a Police Report on the theft within 7 days of the theft allegedly occurring;
- (c) Where the Customer has breached any clause of this Contract;
- (d) Where the theft is caused by the negligence of the Customer or the Customer's agent;
- (e) Where the damage is caused by vandalism, or in Kiwi Hire & Sales' reasonable opinion in any way whatsoever other than by the ordinary use of the Motor Vehicle by the Customer; or
- (f) Where the damage is:
 - To or caused by a truck mounted loading device;
 - To tyres;
 - To glass;
 - Caused while the Motor Vehicle is being driven on any road that is unsealed or not a public road; or
 - Caused by overloading.

9. Customer not to Claim Damages

To the maximum extent permitted by law Kiwi Hire and Sales shall not be liable to the Customer or any guarantor (or any agents or employees) whether in contract, tort or otherwise, and the Customer cannot recover from Kiwi Hire and Sales compensation for any damages or loss (including for consequential loss), arising in respect of this Contract or the hiring or the use of the Equipment. NB This clause does not affect any rights the Customer may have under the Consumer Guarantees Act 1993 ("CGA"), if the Customer is a consumer as defined in the CGA.

10. Breach of Hire Contract by Customer

10.1 If the Customer breaches any clause whatsoever of this Contract, or the Customer or any guarantor becomes bankrupt, insolvent or ceases business then Kiwi Hire and Sales shall be entitled to:

- (a) Terminate this Contract; and/or
- (b) Sue for recovery of all monies owing by the Customer; and/or
- (c) Repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.

10.2 The Customer indemnifies Kiwi Hire and Sales in respect of any breach by the Customer of any provisions of this Contract.

11. No Warranties

11.1 All warranties and conditions are excluded to the full extent permitted by law and Kiwi Hire and Sales' only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Equipment again or to the repair of the Equipment. NB This clause does not affect any rights the Customer may have under the CGA, if the Customer is a consumer as defined in the CGA.

11.2 If the Equipment is hired by the Customer for the purposes of a business, then the Customer agrees that Kiwi Hire and Sales shall have no liability to the Customer under the Consumer Guarantees Act 1993 in connection with the Equipment.

12. Disputes



Kiwi Hire and Sales Ltd | 25a Tegal Road, Drury, Auckland 2578 | GST: 106-725-225 | Phone: +64 9 266 9944 | Email: admin@khs.co.nz | Website: www.khs.co.nz

12.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Kiwi Hire and Sales in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30-day period, the Hire Charges are deemed to be accepted by the Customer.

12.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Kiwi Hire and Sales), the Parties agree to negotiate to settle the dispute with the assistance of Hire Industry Association of New Zealand Inc. before litigation.

13. Privacy Act 1993

The Customer and any guarantor consent to Kiwi Hire and Sales obtaining such information and making such enquiries about either of them from any source, including credit reference and reporting agencies and companies related to Kiwi Hire and Sales, in relation to this agreement and disclosing information about either of them to credit reference agencies, companies related to Kiwi Hire and Sales, sureties, financiers of Kiwi Hire and Sales, the trustee under any debenture trust deed granted by Kiwi Hire and Sales or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by Kiwi Hire and Sales and request correction of any errors in that information.

14. Amendments

14.1 Kiwi Hire and Sales may amend these terms and conditions by notice to the Customer, or by displaying the amended terms on its website. From the date of that notice or display, the amended terms will apply to the hire of all Equipment commencing after the date of that notice or display.

15. Payments

15.1 All payments under this Agreement by the Customer must be made without set-off, counterclaim or withholding.

16. Governing Law

16.1 This Hire Contract is governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand. (Effective – January 2013)